



**Department**

# **Kentucky**

## **Department of Workers' Claims**

**Annual Report  
Fiscal Year  
2002-2003**



**of Workers' Claims**

**Commonwealth of Kentucky  
Department of Workers' Claims**

Prevention Park  
657 To Be Announced Avenue  
Frankfort, KY 40601  
Telephone 502-564-5550  
Fax 502-564-8250

**Website** <http://labor.ky.gov/dwc>

COMMISSIONER  
Larry M. Greathouse

WORKERS' COMPENSATION BOARD  
Dwight Lovan, Chairman  
(270) 687-7339

Jonathan Stanley  
John Gardner  
(859) 246-2773

ADMINISTRATIVE LAW JUDGES  
Sheila C. Lowther  
Chief Administrative Law Judge  
(502) 564-5550

In addition to the Frankfort office, DWC specialists and ombudsmen may be contacted at the following offices for information and assistance regarding workers' compensation issues:

**Toll free 800-554-8601**

410 West Chestnut Street, Suite 700  
**Louisville, KY 40202**  
Telephone 502-595-4146  
Fax 502-595-4146  
**Toll free 866-874-0006**

220-B North Eighth Street  
**Paducah, KY 42001**  
Telephone 270-575-7048  
Fax 270-575-7025  
**Toll free 800-554-8603**

145 East Center Street  
**Madisonville, KY 42431**  
Telephone 270-824-7023  
Fax 270-824-7603  
**Toll free 866-874-0005**

131 Summit Drive, Suite 103  
**Pikeville, KY 41501**  
Telephone 606-433-7661  
Fax 606-433-7798  
**Toll free 800-554-8602**



LABOR CABINET

**DEPARTMENT OF WORKERS' CLAIMS**

**Prevention Park  
657 To Be Announced Avenue  
Frankfort, Kentucky 40601  
Telephone (502) 564-5550  
Web Site: [labor.ky.gov/dwc](http://labor.ky.gov/dwc)**

Honorable Ernie Fletcher  
Governor  
The Capitol  
700 Capitol Avenue, Suite 100  
Frankfort, Kentucky 40601

Dear Governor Fletcher:

Pursuant to KRS 342.230 and KRS 342.435, I submit the Annual Report of the Department of Workers' Claims for Fiscal Year 2002-03, which encompasses activities of the Department from July 1, 2002 through June 30, 2003. This Annual Report details steps taken by this agency in our quest to assure prompt delivery of statutory benefits in an efficient manner.

KRS 342.435 requires the Commissioner to make a report to the Governor on an annual basis on or before the fifteenth day of December. This report includes data as to number of traumatic injury and occupational disease claims filed, awards made, claims rejected, and appeals from Administrative Law Judges to the Workers' Compensation Board and/or to the Kentucky Court of Appeals and Supreme Court.

This Annual Report provides data as to the causes of accident for which awards were made or claims rejected. It reviews the first year of implementation of HB348 enacted in 2002, coal workers' pneumoconiosis (CWP), "black lung" occupational disease. This report provides additional information which the Commissioner deems proper to call to the attention of the Governor.

The Department is very fortunate to have on staff a host of dedicated employees. Utilizing technology and emphasizing the necessity of offering expert services to the entirety of the Commonwealth's workers' compensation community, employees of the Department of Workers' Claims have diligently performed to fulfill its mission during this Fiscal Year. Thank you for your support and keen interest in the workers' compensation program.

Sincerely,

A handwritten signature in cursive script, reading "Larry M. Greathouse".

Larry M. Greathouse, Commissioner  
Department of Workers' Claims

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# Kentucky Workers' Compensation Program Overview

The Department of Workers' Claims (DWC) has the overall authority and oversight responsibility for operation of Kentucky's Workers' Compensation Program under Chapter 342 of the Kentucky Revised Statutes. The DWC is administratively attached to the Kentucky Labor Cabinet. The primary purpose of Kentucky's Workers' Compensation Act is to restore an income stream to an injured worker to the extent it has been severed by an industrial injury or occupational disease; to provide timely medical services for the cure or relief of the injury; and, to provide rehabilitation and retraining services to injured workers unable to return to their former jobs. The primary goal of the DWC is to assure prompt

delivery of statutorily enacted benefits, by providing an expedient processing of injury and occupational disease claims through a non-adversarial process, including mediation, and resolution of disputes through prompt adjudication by administrative law judges (ALJs).

The General Assembly enacted sweeping reforms to the program in December of 1996 upon call of a special session by the Governor (House Bill 1). Total cost in premium dollars of the Kentucky systems in 1996 was equivalent to four (4) times the businesses' state corporate income tax liability. The Kentucky Coal industry was in crisis. Premiums in the coal industry had risen 89% in the preceding two years. The number of workers receiving awards in the previous seven (7) years had more than doubled, despite no evidence of increase in on-the-job injuries.

Legislation in the Workers' Compensation Reform of 1996 was enacted which focused on critical objectives of fairness to injured workers and affordability for employers who pay for the system. Benefits levels were based on objective impairment ratings under the American Medical Association (AMA) Guides to Functional Impairment; benefit liability was terminated when an injured employee reached 65 years of age; "Injury" was redefined to end subjective decision-making by ALJs. Guaranty Funds were created for all self-insured employers to off-set termination of benefits if employers became insolvent or bankrupt.



However, after full implementation of the 1996 reforms, it was apparent by the year 2000, that refinements to the system were warranted. The General Assembly in 2000 (House Bill 992) increased benefit levels for traumatic injury by taking a worker's age and educational level into account. HB 992 also



increased death benefits; enhanced penalties against employers for safety violations which result in work injury; reduced the level of adjudication by eliminating arbitrators; and, reinstated the Workers' Compensation Board for administrative appeal from ALJs before appeal to the appellate courts are authorized. Additional refinement to the law was made during the 2002 General Assembly (House Bill 348) providing that coal miners who leave the coal mining industry and are determined to suffer from the occupational disease of coal worker's pneumoconiosis (black lung) should have opportunity to make transition to other employment by education and retraining programs. Miners who are 57 years of age at the time of their last exposure to coal dust could be entitled to monetary indemnity payments.

The DWC is organized administratively into the Office of the Commissioner, Office of General Counsel, Office of Administrative Services, four (4) divisions, Administrative Law Judges (ALJs), and Workers' Compensation Board (WCB). The Commissioner is appointed by the Governor

from a list of three (3) candidates nominated by the Workers' Compensation Nominating Commission. The Commissioner must receive confirmation from the Kentucky State Senate in accord with procedures established in KRS 342.213, KRS 342.228 and KRS 11.160. There are four (4) major administrative divisions within the DWC under the immediate supervision of the Commissioner. These include: Division of Claims Processing; Division of Security and Compliance; Division of Information and Research, and Division of Ombudsmen and Workers' Compensation Specialists. Each division is headed by a division director.

The DWC also includes an adjudicative function. Statutory enactment authorizes nineteen (19) ALJs. There are currently (16) ALJs employed who make decisions in all claims filed before the department. Each ALJ is appointed by the Governor for a term of four (4) years from a list of three (3) names submitted by the Workers' Compensation Nominating Commission. Each ALJ must be confirmed by the Kentucky State Senate. KRS 342.230, KRS 11.160. One ALJ is appointed Chief ALJ by



the Governor who assists the Commissioner by scheduling hearing dockets; providing supervision of ALJs; handling emergency dockets; and, assisting the Commissioner in providing educational training of ALJs. Claims are heard in twelve (12) hearing sites located geographically throughout the state for convenience of employees and employers.

The WCB consists of three (3) members appointed by the Governor for staggered terms of four (4) years, from a list of three (3) candidates submitted to the Governor by the Kentucky Workers' Compensation Nominating Commission. Confirmation by the Kentucky State Senate is required. KRS 342.215, KRS 11.160. Members of the WCB must possess the same qualifications as judges of the Court of Appeals. One member is appointed by the Governor as Chair of the Board. The WCB renders opinions in appeals taken from decisions by ALJs. Any further appeal is taken by direct appeal to the Kentucky Court of Appeals and thereafter to the Kentucky Supreme Court. Rules adopted by the Supreme Court authorize such appeals from the WCB to the judiciary.

Because of the impact of medical cost in claims, the General Assembly requires the Commissioner to promulgate regulations and implement fee schedules to contain cost of medical services provided to injured workers. The schedule of fees must be fair, current and reasonable. Currently, fees paid for medical services are regulated by three (3) specific regulations: (1) Workers' Compensation Medical Fee Schedule for Physicians; (2) Workers' Compensation Hospital Fee Schedule; and, (3) Workers' Compensation Pharmacy Fee Schedule. The organization of the DWC undertakes other cost containment measures by statutory directives: Managed Health Care Programs, Utilization Review Programs and

Medical Bill Audit Programs must be certified by the Commissioner. These are implemented in an effort to contain health care costs while striking the balance required by statute of providing quality medical care to injured workers at a price employers can afford.

The DWC, moreover, enforces the mandatory workers' compensation coverage statutes with citations and fines against employers who fail or refuse to cover their workers' compensation liability with insurance; and, assess fines against insurance carriers who violate the unfair claims settlement practice statutory provisions of the Act, and regulations promulgated by the Commissioner.

The funding source for 100% of the Workers' Claims' budget is provided by the Workers' Compensation Funding Commission whose purpose is to collect assessments levied upon workers' compensation insurance premiums paid by employers and a simulated premium for self-insured employers. The Funding Commission invest and manage such assessed funds pursuant to KRS 342.122. These assessments are restricted trust and agency funds segregated from other public and state monies.



## House Bill 348...From the Coal Fields to Town Hall

House Bill 348, best known for expanding benefits for miners with Black Lung, and providing better opportunities and incentives for retraining, did more than impact Kentucky's miners, it brought rigorous changes to the Department of Workers' Claims (DWC) with respect to how a claim is filed and processed.

Prior to its effective date on July 15, 2002, much ground work was laid by the DWC to ensure availability and cooperation of key players, such as NIOSH certified B-Readers, UK and U of L medical staff/facilities, the Department of Vocational Rehabilitation, and Kentucky Cabinet for Workforce Development. As a result, new forms, notices, procedures, and posters were developed.

In the fiscal year since HB 348 became law, the Department of Workers' Claims has put theory into practice yielding an aggressive educational outreach campaign, expanded internal procedures for processing new Coal Workers' Pneumoconiosis (CWP) cases, implemented a program for claims

submitted for reconsideration, and designed tools for monitoring administrative and program performance.

Initially, the Department's major focuses were on educating the public with information needed to fully understand the legislative changes, and providing immediate access to literature and forms associated with CWP filings and requests for reconsideration. Through the

# YOU CAN CHOOSE TO WEAR ANOTHER HAT




Whether you're an employer or a worker, consider both these hats. You have a choice of many education and training options available to make workers safe, self-sufficient, confident and... you might think you're getting that training, but not all workers can. You can't tell if they're competent or not. A hard hat is a worker's only one primary safety precaution. You can receive some benefits while you're training and receive your education cost, plus possible bonuses upon completion.

See what opportunities exist!

Call 1-800-4-A-Worker for more information 1-800-4-63-6369	
<b>Laborer</b> 1-800-4-A-Worker	<b>Skilled Worker</b> 1-800-4-A-Worker
<b>Trainer</b> 1-800-4-A-Worker	<b>Apprentice</b> 1-800-4-A-Worker

or visit our website at [www.4aworker.org](http://www.4aworker.org)

Options are available to all workers and employers

If you are an employer or employer/employee and/or you are a worker, you can choose to wear another hat.

See what options are available to employers and workers  
 1-800-4-A-Worker [www.4aworker.org](http://www.4aworker.org)

See what options are available to employers and workers  
 1-800-4-A-Worker [www.4aworker.org](http://www.4aworker.org)

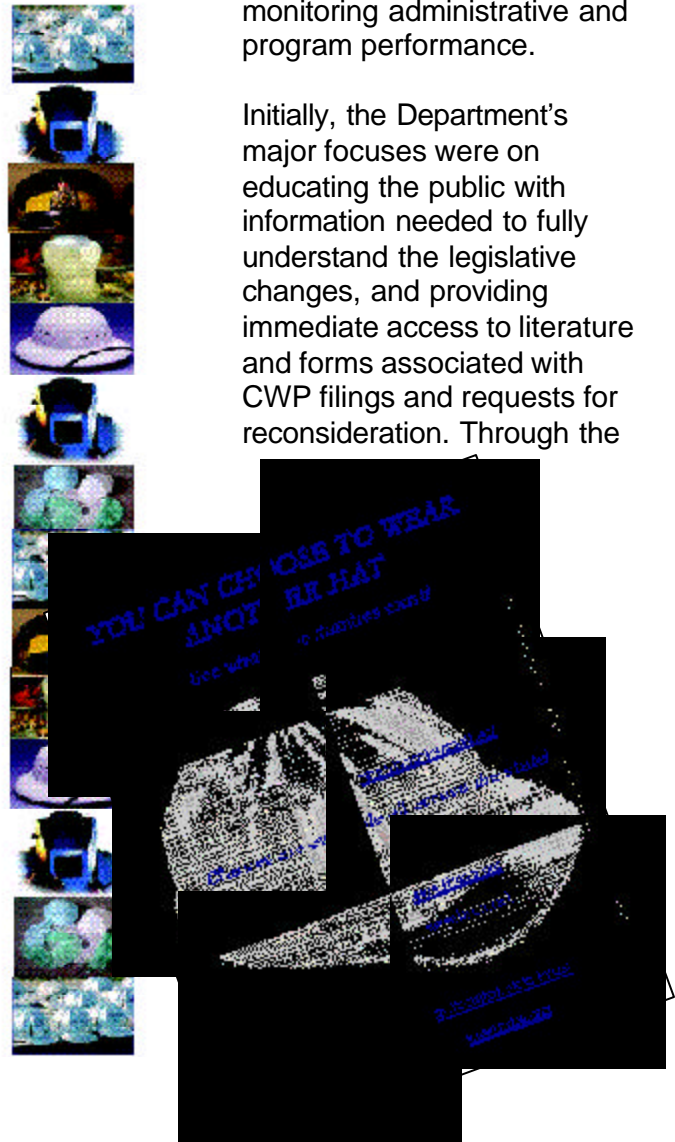
Under this program, you can qualify for up to 12 hours of CCE education. (Employers need not pay special bonuses or stipends to receive a CCE credit. The additional value is yours as a worker and as a new tool.

See what options are available to employers and workers  
 1-800-4-A-Worker [www.4aworker.org](http://www.4aworker.org)

See what options are available to employers and workers  
 1-800-4-A-Worker [www.4aworker.org](http://www.4aworker.org)

John J. Callahan  
Joe Horowitz  
800-4-A-Worker

Deputy Director of the Bureau of Labor Statistics  
LARRY M. GONZALES  
800-4-A-Worker



## House Bill 348 Statistics FY 2002-03

661	Claims and Reopenings filed
21	Reached Party Consensus
551	No Party Consensus
432	B-Reading Panels Scheduled
346	Claims Completed B-Reading Panel
339	Panels Reached Consensus
7	Panels Could Not Reach Consensus
31	Dismissals
1	Award

use of the Department's web site, radio broadcasts, public speaking engagements, and written material, the goal of informing Kentucky's stakeholders has been accomplished.

As part of the Department's ongoing commitment to the effective enactment of HB 348 an educational outreach program was designed to bring the message to the people. Spearheaded by Deputy Commissioner Thomas "Tick" Lewis, accompanied by representatives from the United States Department of Labor, the process of canvassing the Eastern and Western Kentucky coalfields began in July 2002. To date, Mr. Lewis has conducted 62 outreach meetings comprised of coal miners, attorneys, coal company representatives, legislators, injured workers, and widows, reaching more than 700 people in the Eastern and Western Kentucky coal counties. These town hall style meetings offer interested parties a unique opportunity to learn about state and federal Black Lung legislation, as well as other workers' compensation issues. As part of the agency's outreach efforts, audience members are provided postcards containing phone numbers and website information. Copies of appropriate forms and

literature are also made available. In some instances, miners are referred to DWC Specialists or attorneys for further information. A program that began on a trial basis, expecting only to touch a few Eastern Kentucky counties, has been expanded as the demand for more information has grown.

Reinforcing the message being taken to the people, more than 520 posters have been distributed to coal employers across the state. The poster includes information about retraining benefits offered to miners and provides contact information for local retraining agencies. The mindset regarding further education and retraining remains a challenge. This may be due in part to the fact that the average age for miners, which have filed CWP claims since July 15, 2002 is 50.6.

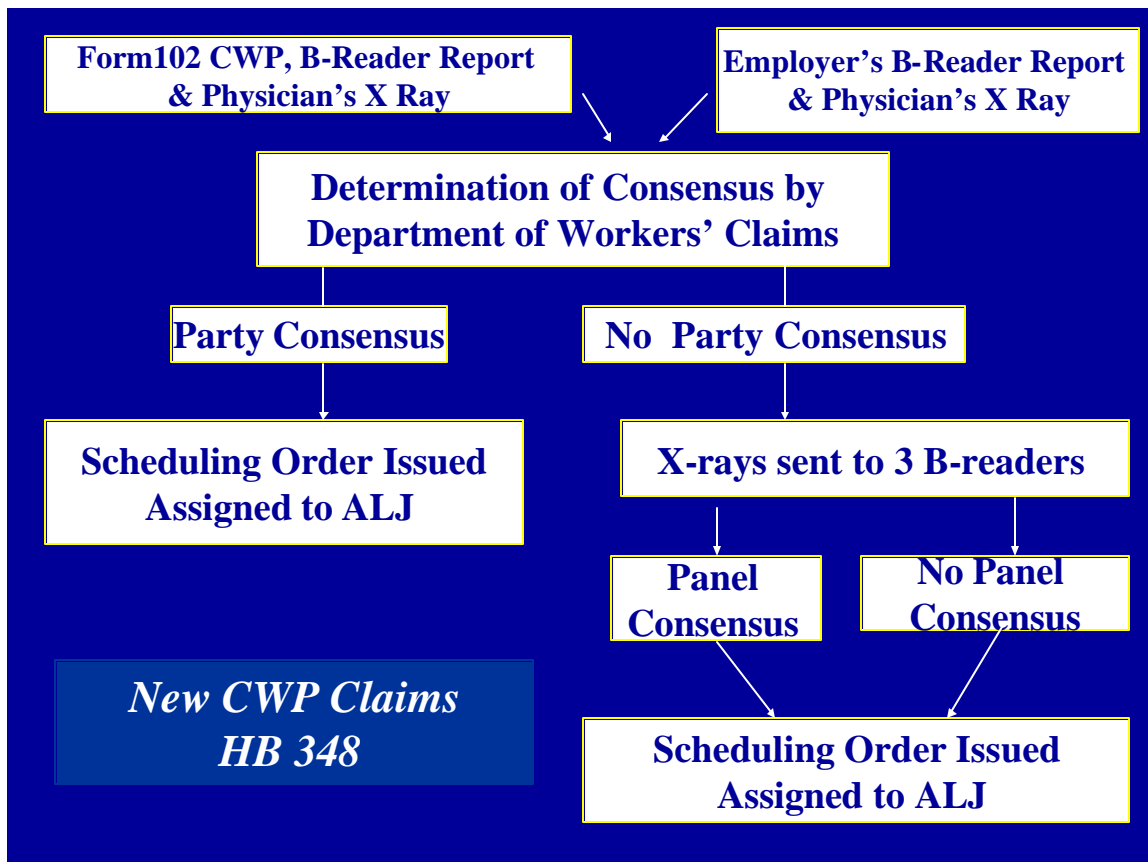
Under HB 348, new claims and requests for reconsideration must include an original x-ray, interpreted by a NIOSH certified B-Reader. Once received by the Department, if these readings are determined by the Commissioner to be in consensus the case is assigned to an Administrative Law Judge and does not proceed through the "Panel Process". Twenty one claims reached positive consensus for CWP at the party level. If no consensus is reached at the party level, then the Department of Workers' Claims forwards the x-rays to a panel of three B-Readers for consecutive interpretations. Each B-Reader has 20 days to return the x-ray to the department along with their findings.

Commissioner Greathouse, by virtue of statutory directive, submitted the first Annual Report on the Performance of Physicians "B" Reader List Consensus Procedure established in House Bill 348 for the FY 2002-03, to the co-chair, Interim Joint Committee on Labor and Industry. This report was submitted to Honorable Katie Kratz Stine, Senator, District 24, co-chair; and, Honorable J.R. Gray, Representative, District 6, co-chair, on July 1, 2003, as required by KRS 342.794(4).

The Commissioner evaluates the "B" Readers with respect to the timeliness and completeness of their reports, as well as the frequency at which the physician's classifications of x-rays differs from the consensus reading. The Commissioner is required to remove a physician from the "B" reader list if the physician consistently renders incomplete or untimely reports, or if the physician's interpretations of the x-rays

are not in conformity with the consensus reading fifty percent (50%) of the time.

During FY 2002-03, twenty-three (23) NIOSH Certified "B" reader, established by the Commissioner, participated in the consensus panel process. Combined, they interpreted coal miner chest x-rays in 1133 assignments from DWC. The average time for return of their interpretation reports was 11.1 days. The average time for each consensus panel of 3 physicians completing the process was 35.55 days. Each of the 23 "B" readers were in conformity with the panel consensus at least 50% of the time. Ninety-one percent of B-Reader reports were submitted within the 20 day compliance period, 97% of reports submitted were complete.



## **“B” Reader Physician Panels**

In creating the “B” Reader physician panels, the Commissioner invited participation by physicians in Kentucky and contiguous states who were certified as “B” Readers by the National Institute of Occupational Safety & Health, and who were licensed by and in good standing with the Kentucky Medical Licensure Board. The following list of physicians served on “B” Reader panels for the CWP program during FY 2002-03.

Glen R. Baker, Jr.  
Corbin Medical Associates  
1007 18<sup>th</sup> Street  
Corbin, Kentucky 40701

Bruce Charles Broudy  
Lexington Clinic  
1221 South Broadway  
Lexington, Kentucky 40504

Ernest L. Coburn, Jr.  
15074 Quail Ridge Way  
Abingdon, Virginia 24210

Abdul K. Dahhan  
120 Professional Lane, #101  
Harlan, Kentucky 40831

Kathleen Ann Deponte  
935 Virginia Avenue  
Norton, Virginia 24273

John Francis Dineen  
Lexington Clinic  
1221 South Broadway  
Lexington, Kentucky 40504

Dennis Herman Halbert  
Pikeville Radiology  
PO Box 2648  
Pikeville, Kentucky 41502

Thomas M. Jarboe  
Lexington Clinic  
1221 South Broadway  
Lexington, Kentucky 40504

William Anthony Kendall  
PO Box 2648  
Pikeville, Kentucky 41502

Arthur Leiber  
UK Medical Center  
Kentucky Clinic A  
125 Rose Street  
Lexington, Kentucky 40507

James Edward Lockey  
Univ. of Cincinnati Medical Ctr.  
Medical Arts Building  
222 Piedmont Avenue, #3400  
Cincinnati, Ohio 45267-0458

Arthur J. McLaughlin, II  
Women's Diagnostic Center  
4004 Dupont Circle, #230  
Louisville, Kentucky 40207

Richard Ellison McWhorter  
1035 Third Avenue, #301  
Huntington, West Virginia 25701

Bapuji Narra  
Mingo Pike Radiology  
411 Central Avenue, #1  
South Williamson, Kentucky 41503

Robert Neil Pope  
Pulmonary Associates of Owensboro  
1000 Breckinridge Street, #300  
Owensboro, Kentucky 42303

Alex Poulos  
Pikeville Radiology  
PO Box 2648  
Pikeville, Kentucky 41502

Robert W. Powell  
224 East Broadway, Suite 700  
Louisville, Kentucky 40202

Mannachanallur R. Ramakrishnan  
Jenkins Community Hospital  
23 Main Street  
Jenkins, Kentucky 41537

David Michael Rosenberg  
3909 Orange Place, Suite 2300  
Orange Village, Ohio 44122

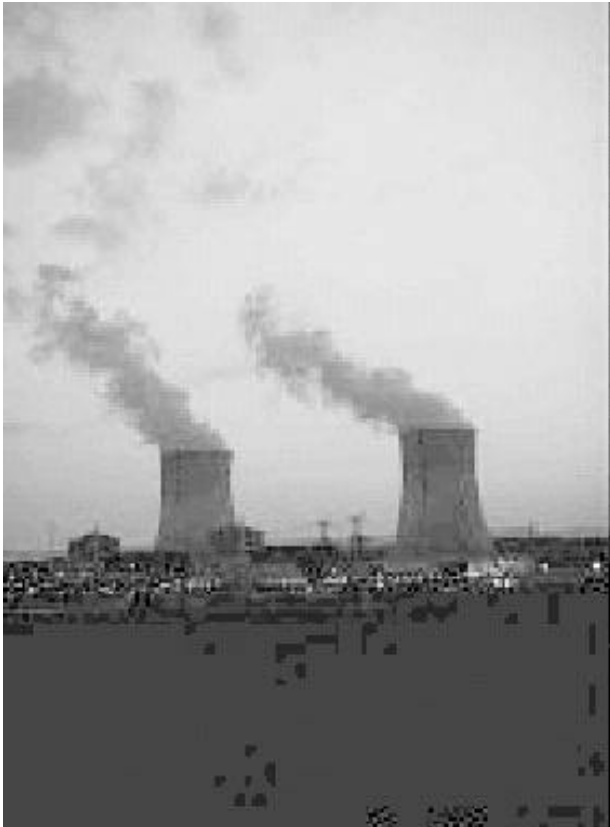
Thomas E. Schultheis  
St. Mary's Medical Center  
3700 Washington Avenue  
Evansville, Indiana 47750

Matthew A. Vuskovich  
Occoptions, Inc.  
15906 Benton Court  
Tampa, Florida 33612-3805

Larry K. West  
Pikeville Radiology  
PO Box 2648  
Pikeville, Kentucky  
41502

Byron Thomas  
Westerfield  
3121 Wall Street, Suite  
200  
Lexington, Kentucky  
40513





## **United States Department of Energy (DOE) and Commonwealth of Kentucky Enter Agreement to Assist Former DOE Contractor Employees in Filing State Workers' Compensation Claims**

During Fiscal Year 2002-03, the United States Department of Energy (DOE) and the Commonwealth of Kentucky, entered into a Memorandum of Understanding in September 2002. The purpose of this agreement is to facilitate coordination and cooperation between the respective federal agency and the Commonwealth, through the Department

of Workers' Claims, under subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (Act) (Pub.L. 106-398).

In Kentucky, workers employed at the Paducah Gaseous Diffusion Plant during the past years may have been exposed to toxic substances which could warrant state workers' compensation claims. The federal law authorized the Secretary of Energy to enter into agreements with states to provide assistance to a DOE contractor employee in filing a claim under that state's workers' compensation system for an illness caused by exposure to a toxic substance at a DOE facility. Non-physician panels will determine whether an illness or death was caused by exposure to toxic substance at a DOE facility.

The DOE Office of Worker Advocacy will review a claim to assure that a worker was employed by a DOE contractor at a DOE site and has reasonable evidence of an illness. The federal Advocacy Office will assist a worker or survivor to obtain necessary medical and exposure records. A physician panel will then review a worker's medical and occupational histories to determine medical causation of an occupational illness based on a uniform standard. If there is a positive finding, DOE will assist an applicant in filing a claim with Kentucky's Department of Workers' Claims. The DOE will direct a contractor not to contest any aspect of the applicant's state workers' compensation claim.

Under this federal/state collaboration, the DOE will promptly notify the Commissioner, DWC, of claims that DOE has accepted as work-related illnesses caused by exposure to toxic substances by a federal DOE contractor employee. The Commonwealth, through the DWC, will provide, in a timely manner, information concerning the status or outcome of a state workers' compensation claim in the DWC by a DOE contractor employee or the employee's estate.



# Rising Cost of Healthcare

The DWC, by virtue of statutory authority under Chapter 342, and through regulations, has during the past decade, implemented a series of fee schedules intended to contain cost of medical services provided to workers injured on the job.

The Commissioner, DWC, is statutorily required to adopt a schedule of fees which are fair, current and reasonable. Currently, fees paid for medical services are regulated by three (3) specific regulations: (1) Workers' Compensation Medical Fee Schedule for Physicians; (2) Workers' Compensation Hospital Fee Schedule; and, (3) Workers' Compensation Pharmacy Fee Schedule.

Other cost containment measures have been implemented through statutory directive. Managed health care systems, utilization review, low back pain practice parameters, and medical fee dispute resolution procedures. Preferred Provider Organizations have been authorized in certain circumstances-all in an effort to contain healthcare cost while striking the balance of providing quality medical care to injured workers at a price employers can afford.

New technology for medical equipment, diagnostic tools and advanced treatment, along with the annual development of new prescription drugs at exceedingly high prices, is a trend which will cause larger expenditure of funds by stakeholders within the workers' compensation community into the foreseeable future.

Currently, DWC has issued an RFP to develop the 2004 "Medical Fee Schedule for Physicians" as required by KRS 342.035. As part of this contractual service, DWC will require the vendor selected to examine and determine if our "Hospital Fee Schedule" and "Pharmacy Fee Schedule" are sufficient in their methodology to contain the double digit increases in cost and to make appropriate recommendations.





# Exclusive Remedy Benefit Methods Claims Process

The General Assembly establishes rights and duties regarding workers' compensation through Chapter 342 of the Kentucky Revised Statutes, the *Workers' Compensation Act*.

In Kentucky, it is the Department of Workers' Claims within the Labor Cabinet that administers the workers' compensation program. The Commissioner of the Department of Workers' Claims is appointed by the Governor to adopt regulations that guide the claims process and the delivery of medical and vocational rehabilitation benefits.

Kentucky's Workers' Compensation Act provides certain benefits to employees injured in job-related accidents and to those who contract or develop diseases due to workplace exposure.

In Kentucky, workers' compensation is considered the "exclusive remedy" for injured workers. This means that in exchange for the protection that workers' compensation coverage offers, employees surrender their right to sue employers in civil court for damages arising from workplace injuries.

Workers' compensation benefits include partial wage replacement, payment of medical treatment and new job training.

If an employee's death occurs as a result of an injury, a lump sum payment is made to the employee's estate, from which burial expenses are to be paid. Income benefits are also extended to the surviving spouse

## Goals and objectives of the Department of Workers' Claims include:

- **Provide information concerning benefits;**
- **Assist informal resolution of disputes;**
- **Maintain records of injuries and program costs;**
- **Process and adjudicate claims;**
- **Enforce laws requiring employer coverage;**
- **Regulate self-insured employers;**
- **Implement strategies to improve carrier performance;**
- **Render program assessment to policy makers.**

and dependents. The amount of the lump sum payment is annually adjusted.

Many workers' compensation disputes are resolved when the parties agree to a compromise settlement. However, if such a settlement can not be reached, it is necessary for the parties to litigate the claim. This process begins when an application for adjustment of the claim is filed with the Department of Workers' Claims by the employee or employer. The Department issues an order assigning the

case to an Administrative Law Judge, and scheduling a benefit review conference. This order also contains a time schedule to allow the parties to file medical documents and evidence in the case.

The Benefit Review Conference is an informal proceeding held before the Administrative Law Judge. It gives the parties the opportunity to discuss the strengths and weaknesses of the case, with the goal of settling it at that time. The Administrative Law Judge also has the opportunity to participate, and rule on any procedural disputes.

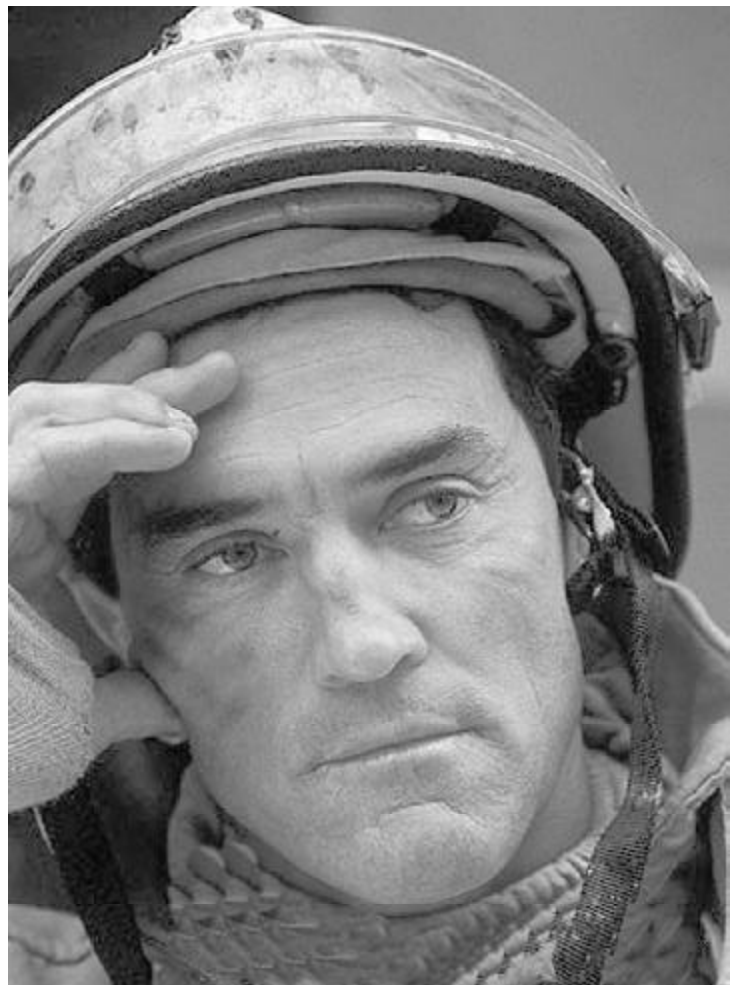
If the claim is not settled at this point, the Administrative Law Judge schedules a formal hearing, which is typically held two weeks later. This hearing is the opportunity for the employee and employer to testify in the presence of the Administrative Law Judge. A court reporter is present, and makes a complete record of that testimony. Within sixty days after that hearing, the Administrative Law Judge issues a decision in the case, awarding or denying income and medical benefits and possibly rehabilitation benefits. That decision is based upon the evidence offered by all of the witnesses, the medical reports filed by the parties, and is controlled by the Workers' Compensation statute and case law. The Administrative Law Judge cannot order an employer to pay income benefits in a lump sum. Such payments only occur when the parties all agree to that arrangement and the Administrative Law Judge approves it.

Any party who disagrees with the decision of the Administrative Law Judge (ALJ) may file an appeal to the Workers'

Compensation Board (WCB). An appeal is a review of the ALJ's decision and determines whether the ALJ erred in applying the law to the facts of the case or whether the ALJ's decision is based on substantial evidence in the record. An appeal is not an opportunity to submit new or additional evidence. On appeal, the ALJ's factual findings will not be changed unless there is no evidence to support the ALJ's decision. Any party who disagrees with the decision of the Workers Compensation Board may appeal to the Kentucky Court of Appeals, and then to the Supreme Court of Kentucky.

### **Who is covered by the Act**

Any person, including an adolescent, who is employed under a contract of hire, express or implied, and all aids or assistants of employees, whether paid by the employer or the employee.



- Every individual in the service of the state, county, city, or other public entity or any of its subdivisions;
- Executive officer of a Corporation;
- All persons working in the course of the trade, business or occupation of an employer at the time of injury;
- Civil Service Personnel;
- Members of the Kentucky National Guard on active duty;
- Every person who is a member of a volunteer ambulance service, fire or police department shall be considered an employee of the political subdivision of the state;
- Temporary help service companies are considered employers of temporary employees.

- Business owners, including Limited Liability Corporations and Partnerships are not covered unless they specifically purchase this coverage for themselves;
- Independent contractors.

There is often a question of whether a worker is an employee or an independent contractor. Four main factors are considered: The nature of the work performed as it relates to the business of the possible employer, the extent of control of details of the work, the professional skill of the worker and the intentions of the parties. An independent contractor, as a skilled tradesman, works on his/her own without direct supervision, setting work hours and providing the needed tools and equipment for the job.

### **Who is not covered by the Act?**

- Any person employed solely in agriculture;
- Domestic servant working in a private home of an employer, who has less than two employees, each working 40 or more regularly scheduled hours per week;
- Individuals performing services for aid or nourishment from religious or charitable organizations;
- Someone employed to do remodeling or repair work in the home of the employer for a time not to exceed 20 consecutive working days;
- Any person who would otherwise be covered but who elects not to be covered in accordance with the administrative regulations promulgated by the Commissioner and KRS 342.395;
- A religious sect denying coverage due to conscientious objection to benefits of any public or private insurance;

Failure to secure workers' compensation insurance coverage subjects the uninsured employer to fines imposed by the Department of Workers' Claims. The employer is liable for benefits to the injured worker. Moreover, if a "general contractor" engages work to be performed by an uninsured subcontractor who has employees, one of whom is injured, the general contractor may be liable for any benefits to the injured worker.

Employee leasing companies must register with the Department of Workers' Claims and demonstrate that workers' compensation coverage has been secured for job sites where leased employees work. Temporary help service companies are deemed the employers of temporary employees and must secure workers' compensation insurance coverage. Two hundred and fifteen (215) employee leasing companies are registered with the DWC. Twenty-two (22) companies registered with DWC during FY 2002-03.

Employees may reject coverage under the Workers' Compensation Act by signing and filing the Employee's Notice of Rejection of Workers' Compensation Act, commonly known as a Form 4 Waiver. By rejecting the Act, employees surrender benefits that may otherwise be due under the Workers' Compensation Act, but retain the right to

sue employers for work-related injury or occupational disease in civil court, if circumstances involving negligence and/or failure to provide a safe workplace is proven. However, the law prohibits employers from requiring employees to sign a Form 4 Waiver as a condition of employment.

## **Reorganization-DWC**

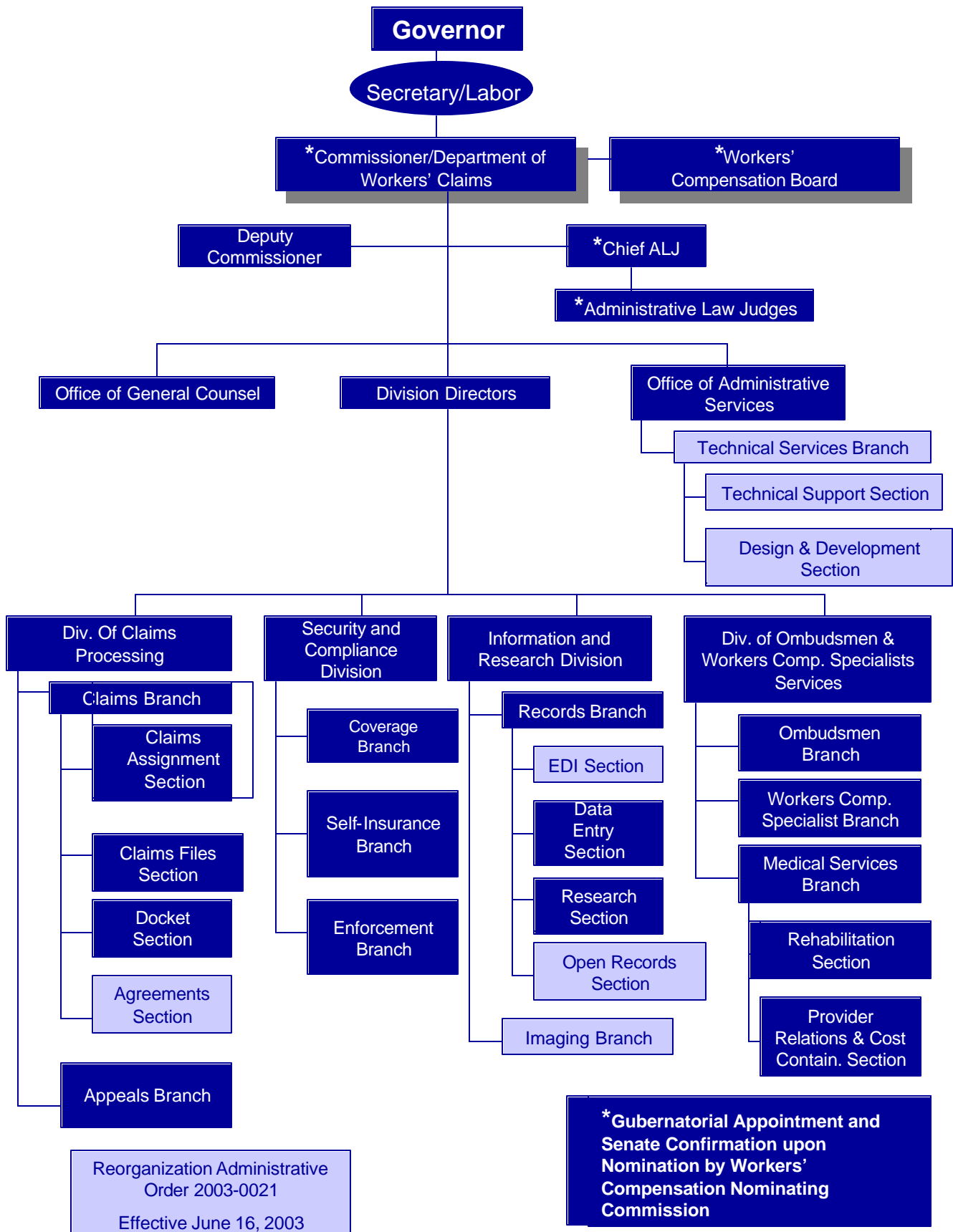
### **Administrative Order 2003-001**

### **Effective June 16, 2003**

Following months of discussion by DWC staff, recommendations were made to the Secretary of Labor to reorganize certain administrative units within the Department of Workers' Claims. Administrative Order 2003-001 was executed by the Secretary of Labor making the requested reorganization changes, effective June 16, 2003.

The reorganization, as shown on the Organizational Chart of the DWC which follows, made changes within the Information and Research Division, the Claims Processing and Appeals Division, and the Office of Administrative Services.

- Information and Research Division:
  - Imaging Branch established.
  - Coding Section of Records Branch renamed the EDI section.
  - Research Section established within the Records Branch.
  - Open Records Section established within the Records Branch.
- Claims Processing and Appeals Division:
  - Agreements Section established in the Claims Branch.
- Office of Administrative Services:
  - Technical Services Branch established.
  - Technical Support section established within Technical Services Branch.
  - Design and Development Section established within Technical Services Branch.



# PROGRAM



# STATISTICS

# First Reports Of Injury

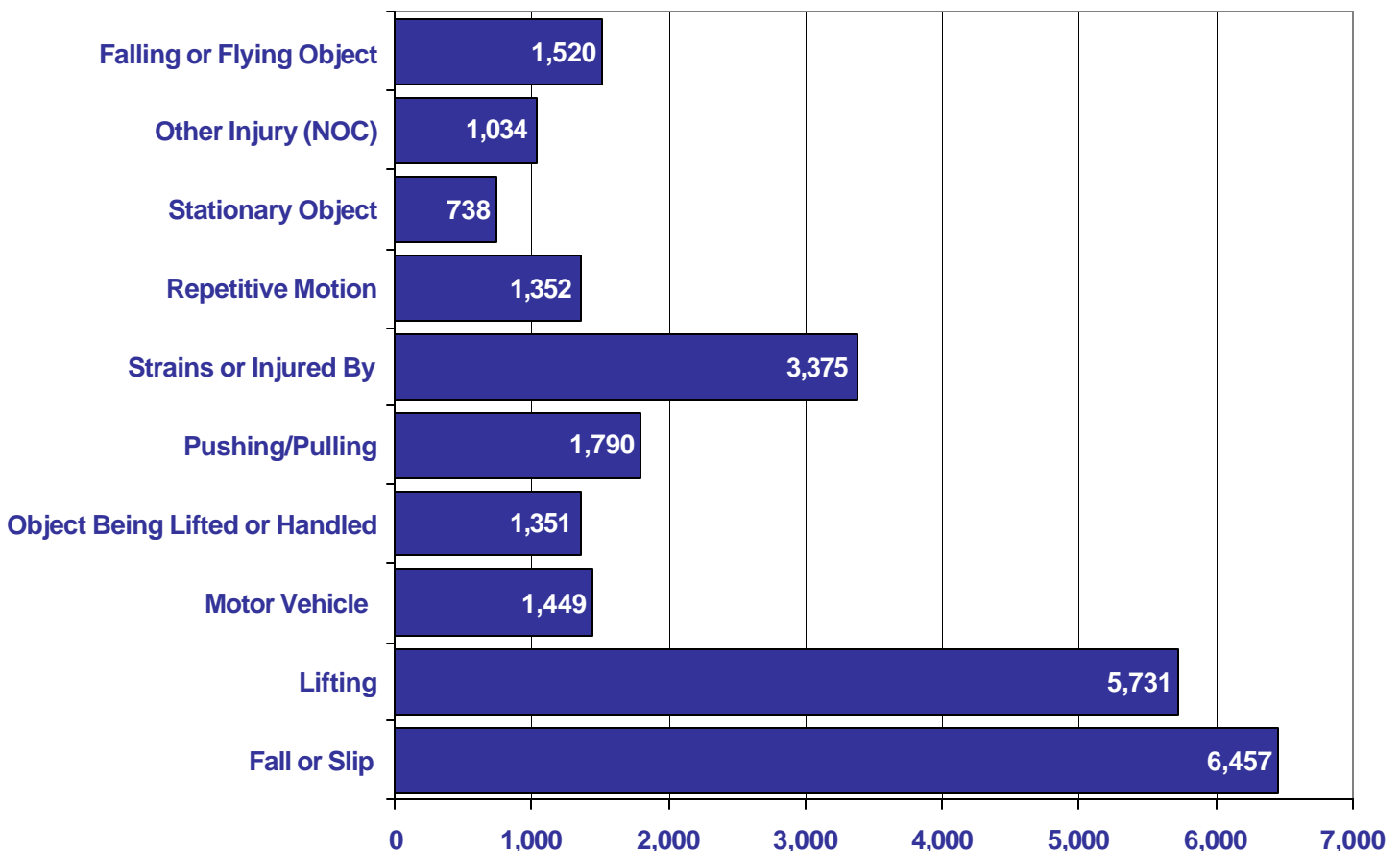
Kentucky Revised Statute 342.038 mandates that employers keep a record of all workplace injuries sustained by employees. Employers must file a First Report of Injury with the Department of Workers' Claims when more than one day of lost work occurs. This report must be filed within one week after learning of the injury. Kentucky employers who fail to comply with this requirement are subject to the penalty provisions of KRS 342.990.

In fiscal year 2002-2003, there were 35,016 lost time First Reports of Injury filed with the

Department (meaning that these injured workers missed more than one day of work).

This fiscal year the services industry reported the most injuries (9,466), followed closely by manufacturing (7,405) injuries. The remainder of the classifications reported as follows: retail trade (5,205), construction (3,243), transportation/communication/public utilities (2,815), public administration (2,807), mining (1,667),

**Distribution of Lost Time Injuries by Cause of Injury  
Top Ten**





## Distribution Of Lost Time Injuries By Type

Hearing Loss	70
Coal Workers' Pneumoconiosis	81
Occupational Disease	1,063
Injury	33,802

wholesale trade (1,233), agriculture/forestry/fishing (517), finance/insurance/real estate (432) and unclassified (226).

The most common work-related injury in FY 2002-03 was caused by falls/slips(6,457). Lifting followed as the second most common cause (5,731).

Review of the nature of injuries revealed that strain (14,084) and sprains (2,752) accounted for nearly half of all reported injuries. Contusions/bruises were reported in 3,938 injuries; there were 2,435 fractures and 2,330 lacerations reported.

The lower back was the most common body part injured (6,954), followed by multiple body parts including systems (4,508). 2,751 workers reported injuries to the knee.

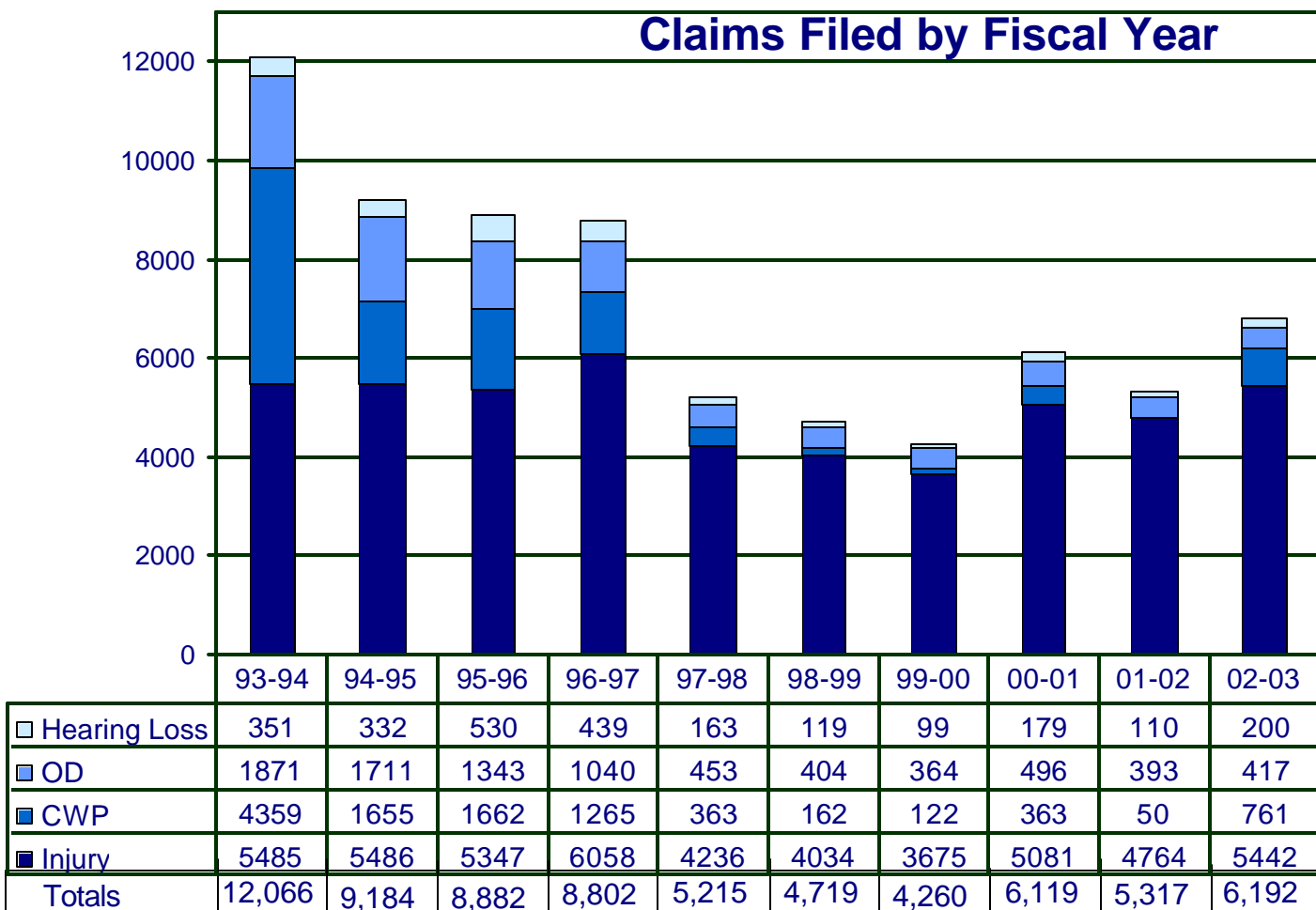
# Workers' Compensation Claims

A workers' compensation claim in Kentucky originates when: 1) A settlement document is filed to voluntarily resolve workers' compensation issues between parties prior to a claim application being filed; or 2) a claim application is filed because the parties are not in agreement and the matter must be resolved by an Administrative Law Judge.

Workers' compensation claims are typically divided into two types, *indemnity* and *medical-only*, a distinction that is used in this report. Indemnity claims are those for which income benefits are paid to compensate for lost wages, functional impairment or death. Medical service costs are paid in addition to income payments.

Most of the data in this report pertains to indemnity claims. Presently, there is no statutory requirement that employers or their insurance carriers report medical-only injuries to DWC, with the exception that Managed Care Companies file Annual Reports detailing medical expenditures.

For an injury to be compensable, it must be related to the employee's work. To be considered for temporary total income benefits, an injured worker must miss more than seven days of work. Medical-only claims are those in which medical services are delivered but the employee does not qualify for income payments.



## Distribution of Claims by Body Part Top Ten

<b>Lower Back</b>	<b>1,458</b>
<b>Multiple Body Parts Including Systems</b>	<b>1,154</b>
<b>Knee</b>	<b>413</b>
<b>Shoulders</b>	<b>379</b>
<b>Wrist</b>	<b>308</b>
<b>Hand</b>	<b>134</b>
<b>Multiple Upper Extremities</b>	<b>151</b>
<b>Lungs</b>	<b>741</b>
<b>Disc</b>	<b>277</b>
<b>Ears</b>	<b>208</b>



In FY 2002-03, there were 6,820 applications for resolution of claims filed with the Department of Workers' Claims.

In reviewing the litigated injury claims, DWC found that lifting was the most common cause of injury, a total of 1,048. Fall or slip (1,144) was the second most common cause of injury. Injuries caused by absorption, ingestion or inhalation totaled 761, while 460 claims involved repetitive motion injuries.

Workers employed in the mining industry filed the greatest number of claims (1,619), followed by manufacturing (1,493) and services (1,219).

## A Comparison by County Labor Force, Lost Time First Reports of Injury (FROI) and Litigated Claims

County	Total Labor Force	FROIs	% of FROIs to Labor Force	Claims	% of Claims to FROIs
Adair	8,016	89	1.11%	6	6.74%
Allen	8,588	52	0.61%	8	15.38%
Anderson	10,060	60	0.60%	8	13.33%
Ballard	4,012	38	0.95%	1	2.63%
Barren	18,329	367	2.00%	26	7.08%
Bath	6,055	27	0.45%	4	14.81%
Bell	9,882	272	2.75%	71	26.10%
Boone	49,824	1024	2.06%	95	9.28%
Bourbon	9,439	160	1.70%	16	10.00%
Boyd	22,469	689	3.07%	119	17.27%
Boyle	14,940	299	2.00%	30	10.03%
Bracken	3,710	22	0.59%	2	9.09%
Breathitt	4,126	83	2.01%	12	14.46%
Breckenridge	8,215	63	0.77%	2	3.17%
Bullitt	34,645	230	0.66%	19	8.26%
Butler	6,626	67	1.01%	3	4.48%
Caldwell	6,464	98	1.52%	7	7.14%
Calloway	18,271	323	1.77%	36	11.15%
Campbell	45,792	433	0.95%	35	8.08%
Carlisle	2,664	17	0.64%	3	17.65%
Carroll	5,523	139	2.52%	20	14.39%
Carter	11,497	153	1.33%	12	7.84%
Casey	7,183	81	1.13%	9	11.11%
Christian	28,673	535	1.87%	59	11.03%
Clark	15,902	343	2.16%	32	9.33%
Clay	8,076	97	1.20%	17	17.53%
Clinton	6,424	71	1.11%	13	18.31%
Crittenden	3,768	40	1.06%	7	17.50%
Cumberland	2,955	42	1.42%	1	2.38%
Daviess	49,271	793	1.61%	89	11.22%
Edmonson	5,044	35	0.69%	3	8.57%
Elliott	2,671	13	0.49%	1	7.69%
Estill	5,732	33	0.58%	7	21.21%
Fayette	142,117	2558	1.80%	274	10.71%
Fleming	6,647	63	0.95%	8	12.70%
Floyd	13,872	385	2.78%	149	38.70%
Franklin	24,835	882	3.55%	79	8.96%
Fulton	3,650	70	1.92%	10	14.29%
Gallatin	3,955	45	1.14%	5	11.11%
Garrad	7,956	60	0.75%	7	11.67%
Grant	11,418	131	1.15%	9	6.87%
Graves	17,479	186	1.06%	31	16.67%
Grayson	13,194	231	1.75%	26	11.26%
Green	4,730	34	0.72%	4	11.76%
Greenup	16,304	122	0.75%	12	9.84%
Hancock	3,953	71	1.80%	11	15.49%
Hardin	39,493	565	1.43%	54	9.56%

## A Comparison by County Labor Force, Lost Time First Reports of Injury (FROI) and Litigated Claims

County	Total Labor Force	FROIs	% of FROIs to Labor Force	Claims	% of Claims to FROIs
Harlan	9,203	371	4.03%	125	33.69%
Harrison	7,504	102	1.36%	7	6.86%
Hart	7,848	95	1.21%	9	9.47%
Henderson	24,204	353	1.46%	26	7.37%
Henry	6,970	58	0.83%	8	13.79%
Hickman	2,448	25	1.02%	3	12.00%
Hopkins	19,110	477	2.50%	56	11.74%
Jackson	6,908	79	1.14%	19	24.05%
Jefferson	378,945	7625	2.01%	781	10.24%
Jessamine	20,817	345	1.66%	28	8.12%
Johnson	9,467	135	1.43%	35	25.93%
Kenton	81,330	939	1.15%	76	8.09%
Knott	5,888	115	1.95%	38	33.04%
Knox	11,349	95	0.84%	19	20.00%
Larue	6,591	45	0.68%	3	6.67%
Laurel	24,326	449	1.85%	86	19.15%
Lawrence	5,406	75	1.39%	12	16.00%
Lee	2,738	58	2.12%	1	1.72%
Leslie	4,324	54	1.25%	26	48.15%
Letcher	8,203	191	2.33%	48	25.13%
Lewis	4,270	45	1.05%	2	4.44%
Lincoln	11,863	75	0.63%	11	14.67%
Livingston	4,987	38	0.76%	3	7.89%
Logan	12,378	156	1.26%	13	8.33%
Lyon	3,407	22	0.65%	8	36.36%
McCracken	33,223	518	1.56%	74	14.29%
McCreary	6,369	67	1.05%	14	20.90%
McLean	4,358	32	0.73%	4	12.50%
Madison	36,198	484	1.34%	65	13.43%
Magoffin	4,903	38	0.78%	17	44.74%
Marion	11,511	158	1.37%	14	8.86%
Marshall	14,551	163	1.12%	39	23.93%
Martin	3,469	219	6.31%	66	30.14%
Mason	8,144	142	1.74%	15	10.56%
Meade	10,540	88	0.83%	1	1.14%
Menifee	3,229	14	0.43%	3	21.43%
Mercer	11,085	140	1.26%	17	12.14%
Metcalf	4,854	48	0.99%	0	0.00%
Monroe	4,638	66	1.42%	7	10.61%
Montgomery	13,356	222	1.66%	36	16.22%
Morgan	5,189	45	0.87%	11	24.44%
Muhlenberg	13,057	173	1.32%	13	7.51%
Nelson	19,815	337	1.70%	24	7.12%
Nicholas	2,463	36	1.46%	3	8.33%
Ohio	9,969	111	1.11%	6	5.41%
Oldham	25,626	245	0.96%	33	13.47%
Owen	4,279	38	0.89%	10	26.32%
Owsley	1,850	11	0.59%	5	45.45%
Pendleton	7,025	67	0.95%	7	10.45%

### A Comparison by County Labor Force, Lost Time First Reports of Injury (FROI) and Litigated Claims

County	Total Labor Force	FROIs	% of FROIs to Labor Force	Claims	% of Claims to FROIs
Perry	11,707	449	3.84%	107	23.83%
Pike	26,869	799	2.97%	322	40.30%
Powell	6,218	46	0.74%	12	26.09%
Pulaski	27,559	698	2.53%	105	15.04%
Robertson	997	0	0.00%	1	#DIV/0!
Rockcastle	3,455	84	2.43%	8	9.52%
Rowan	10,464	171	1.63%	18	10.53%
Russell	6,071	93	1.53%	11	11.83%
Scott	18,257	785	4.30%	69	8.79%
Shelby	19,144	344	1.80%	33	9.59%
Simpson	8,509	120	1.41%	21	17.50%
Spencer	6,008	38	0.63%	4	10.53%
Taylor	9,624	188	1.95%	19	10.11%
Todd	5,051	45	0.89%	6	13.33%
Trigg	6,322	96	1.52%	7	7.29%
Trimble	3,421	17	0.50%	1	5.88%
Union	6,153	103	1.67%	16	15.53%
Warren	51,616	969	1.88%	86	8.88%
Washington	6,199	74	1.19%	4	5.41%
Wayne	8,922	120	1.34%	11	9.17%
Webster	5,534	175	3.16%	20	11.43%
Whitley	14,689	456	3.10%	94	20.61%
Wolfe	3,081	45	1.46%	8	17.78%
Woodford	12,725	206	1.62%	20	9.71%
Out of State		1183		250	21.13%
Unknown		37		2188	5913.51%
Grand Total	1,973,229	35016	1.77%	6820	19.48%

**\*Workforce Data provided by the Department of Workforce Development.**

**\*\*Agriculture is included in the total labor force numbers.**

# Work-Related Fatalities

Initially, there were 100 on the job fatalities reported to the Department of Workers' Claims in fiscal year 2002-2003. After investigation, 52 of these deaths were determined to be work-related; the remainder have been ruled not work-related, not a Kentucky claim, or contain issues which are still in a pending status.

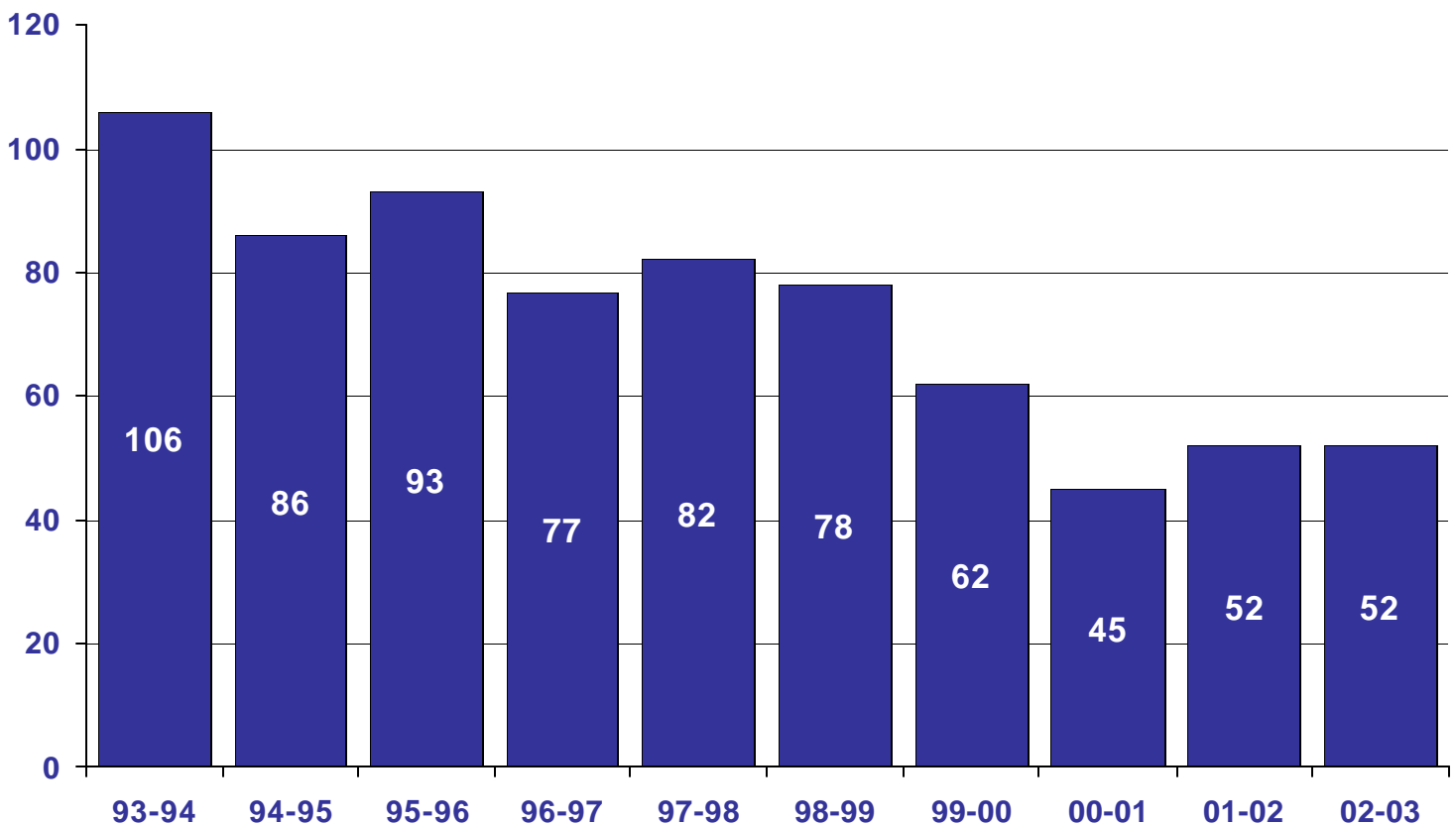
Two 20 year old males comprise the youngest casualties reported this fiscal year. One was killed by being struck with flying parts from machinery. The other was killed in a motor vehicle accident. The oldest, a 79-year old deputy sheriff, was killed in a motor vehicle accident.

The most common cause of the injuries that led to these deaths were motor vehicle accidents (28) and workers being struck by machinery or flying/falling parts (10). Seven

workers died from falls or slips. Being caught in or between machinery accounted for three fatalities. Three workers died from electric shock and one worker died from a heart attack.

Occupations of these workers ranged from police officers to painters, boilermakers and coal miners, EMTs and truck drivers. The construction and manufacturing industries were the most deadly, with the reporting of twelve and eleven fatalities (respectively). The transportation/communication/public utilities sector claimed eight lives. The public administration and services industry each claimed five lives. The mining and retail trade sectors each had three fatalities. There were four deaths in the wholesale trade industry and one death in the agriculture, forestry and fishing sector.

## Work Related Fatalities by Fiscal Year





# Fiscal Performance



The Department of Workers' Claims receives 100% funding from an assessment levied on workers' compensation insurance premiums and simulated premiums on self-insurance employers, which is collected by the Workers' Compensation Funding Commission (KRS 342.122). These funds are restricted and no general fund dollars are appropriated for DWC operations.

The Department's enacted budget for Fiscal Year 2003 was \$16,397,700. As of June 30, 2003, DWC had spent and encumbered \$13,384,936 or 82% of the enacted budget.

The Department has and will meet all budget reduction targets for discretionary expenditures and personnel reductions as required by Governor's Executive Order 2002-1334 and House Bill 269 as enacted by the 2003 General Assembly.

# DWC PERSONNEL AD BUDGET HISTORY

FY 1989-90 through FY 2002-03

FISCAL YEAR	PERSONNEL CAP	PERSONNEL ACTUAL	BUDGET ALLOTMENT (\$)	ACTUAL EXPENDITURES (\$)	DIFFERENCE (\$)	PERCENT of BUDGET EXPENDED
2002-2003	242	201	16,397,700	13,384,935	(3,012,765)	81.6%
2001-2002	242	204	15,806,800	13,373,836	(2,432,963)	84.6%
2000-2001	242	208	14,942,300	12,716,927	(2,225,373)	85.1%
1999-2000	268	207	15,637,000	12,387,288	(3,249,712)	79.2%
1998-1999	268	208	14,994,000	12,606,188	(2,387,812)	84.1%
1997-1998	272	227	15,182,500	12,588,527	(2,593,973)	82.9%
1996-1997	272	229	12,137,900	11,057,391	(1,080,509)	91.0%
1995-1996	207	138	9,822,200	9,479,970	(342,230)	96.5%
1994-1995	210	120	9,757,200	8,586,716	(1,170,484)	88.0%
1993-1994	167	159	7,860,000	7,337,688	(522,312)	93.4%
1992-1993	167	160	7,505,100	7,004,561	(500,539)	93.0%
1991-1992	153	150	6,901,600	6,497,815	(403,785)	94.0%
1990-1991	155	149	6,737,300	6,487,540	(249,760)	96.0%
1989-1990	139	136	5,695,100	5,295,835	(399,265)	93.0%

## Commissioner's Office

Larry M. Greathouse has served as Commissioner, DWC, since March 16, 2002 having been appointed by the Governor and confirmed by the Kentucky State Senate.

The Commissioner's Office is responsible for the complete administrative authority in carrying out the functions of the agency. The Commissioner is required to establish and fill all personnel vacancies; oversight and monitoring of all personnel, both within the administrative divisions of the Department and the administrative law judges within the adjudication system of the agency; management and accountability of all budget functions of the agency; administering memorandums of agreement and personal service contracts; training and instructing personnel on an on-going basis; serving as the official custodian of the records; assimilating and monitoring data regarding Departmental operations; preparing medical fee schedules for physicians, hospitals, and pharmacy costs; certification of managed care companies, utilization review and medical bill audit entities for workers' compensation; certification of self-insured employers and group self-insurance funds; serving ex-officio director positions on self-insurance Guaranty Fund Boards; promulgating and revising administrative regulations and proposing statutory revision; reporting quarterly and annually to the Governor regarding number of claims, awards made, causes of accidents leading to work-related injuries, and recommendations, if any, and to publish and distribute among employers and employees information as may be useful and necessary; public education relative to the workers' compensation system; imposition of fines against insurance carriers for unfair claims practices; imposition of fines and penalties in cases where employers do not carry

specified workers' compensation insurance coverage required by statute or levying fines against carriers which fail to provide medical benefits as required by statute and/or regulation.

During FY 2002-03, the Commissioner issued six (6) "Bulletins" for the purpose of giving guidance to parties, claims and stakeholders within Kentucky's workers' compensation community. They included the following:

1. "Bulletin" of September 18, 2002. Negotiated Fees for Medical Services; Workers' Compensation Medical Fee Schedule;
2. "Bulletin" of November 8, 2002. Actuarial Peer Review of Self-Insurance Workers' Compensation Groups;
3. "Bulletin" of January 24, 2003. Workers' Compensation Coverage for Healthcare Workers Receiving Smallpox Vaccinations;
4. "Bulletin" of February 10, 2003. Legion Insurance Company and Villanova Insurance Company (Guidance for ALJs and parties in claims before the DWC, while these insurance companies are in rehabilitation in the Commonwealth of Pennsylvania);
5. "Bulletin" of April 14, 2003. Kentucky Workers' Compensation and HIPAA; Revised Form 106, Medical Waiver and Consent;
6. "Bulletin" of May 8, 2003. Any Willing Provider Rule; U.S. Supreme Court Decision – Impact On Workers' Compensation Managed Care Plans

## Office of Administrative Services

Donna G. Dixon has served as Executive Director since September 2002. The Office of Administrative Services is responsible for insuring all financial transactions and personnel actions are: executed in a timely manner, comply with applicable laws and regulations, properly documented, and allocated to the appropriate Program Budget Unit. The Office manages and executes the annual budget and all contracts & leases; responds to all requests for publications and forms; processes all incoming and outgoing mail; procures supplies and equipment; maintains infrastructure for eighteen agency locations; coordinates training; and provides daily assistance to all Divisions of the Department. The Office's Technical Support Branch is responsible for: purchasing and installing all hardware and software; designing and developing all data systems inclusive of maintaining and enhancing databases and applications; responding to end user and stakeholder inquiries; maintaining complex network and insuring system backups; maintaining, managing, and enhancing the agency website inclusive of developing new web-enabled programs; processing all Electronic Data Interchange transactions; scheduling computer related

training for all agency employees; and provides daily support to all Divisions of the Department.

By virtue of statutory directives, the DWC makes available by publishing the following:

Medical Fee Schedule for Physicians  
Commissioner's Report on "B" Readers  
Hospital Fee Schedule  
Commissioner's Annual Report  
Benefits Schedule  
Commissioner's Quarterly Report  
Compliance Inspection Pamphlet  
Present Worth Table  
W/C Guidebook (English & Spanish)  
Workers' Compensation Rates  
W/C Forms (English & Spanish)  
Annual Review of Self-Insurance  
W/C Posting Notice (English & Spanish)  
Life Expectancy Tables  
Rehabilitation Pamphlet  
Certificate of Self-Insurance  
Posting Notice of Education & Training  
List of "B" Readers for CWP  
Acute Low Back Pain Booklet

## Office of General Counsel

### Rex Hunt, General Counsel

The Office of General Counsel is responsible for legal support services to DWC in numerous legal capacities. The office advises the Commissioner's office as to responsibilities with regard to personnel actions under KRS Chapter 18A, and defends the Department against any actions, personnel or otherwise, that are filed against the Department. Additionally, the General Counsel's Office has responsibility for promulgating regulations

employers pursuant to KRS 342.770. The office is responsible for reviewing open records requests in compliance with the state's open records law. The office works closely with the Division of Workers' Compensation Specialists and Ombudsman in investigating unfair claims practices, and is responsible for issuing citations and representing the Department at hearings when it has been determined that an unfair claims practice has occurred.



During FY 2002-03 the General Counsel's Office drafted the reorganization plan and associated documents for several Divisions. During this past fiscal year, the General Counsel's Office has collected \$214,555 in fines and penalties. The office received 331 citation cases, 17 unfair claims settlement practice cases, and 19 new fraud cases, all representing increases over the prior year. This Department has filed restraining orders and

required of the Department and drafting and reviewing legislation. The office provides assistance to the Enforcement Branch in ensuring compliance with workers' compensation laws for imposition of injunctions and fines against employers who neglect or refuse to provide Workers' Compensation coverage for their employees. In circumstances where an employee is injured and their employer has failed to provide insurance coverage liens are filed against assets of uninsured

collection actions in circuit court, held formal hearings and show cause hearings before administrative law judges, and drafted agreed orders for settlements with regard to the above cases. The office has also represented the Department, more specifically the Coverage and Compliance Division, with regard to self-insurance legal issues and/or bankruptcy proceedings. The current economy has forced more companies into bankruptcy and/or reorganization.

The office reviews the majority of open records requests, drafting the appropriate response and directing the release of records as provided by law. During FY 2002-03, this office reviewed legislation and drafted impact statements in response to proposed legislation. In the last fiscal year, the office has promulgated the following regulations: 803 KAR 25:120 Training or Education programs eligible for retraining incentive benefits and bonuses. 803 KAR 25:009 Procedure for Adjustment of Coal Workers' Pneumoconiosis claims; 803 KAR 25:010 Procedure for Adjustment of Claims, amended to comply with changes in black lung laws and currently amended to update Form 106 to comply with HIPAA requirements; 803 KAR 25:021 Individual Self-Insurers; 803 KAR 25:026 Group Self Insurers, both regulations were amended to update forms only; 803 KAR 803 KAR 25:125 Computation of Attorney Fee in Award of Retraining Incentive Benefits pursuant to KRS 342.732 (1)(a) and Interim Attorney Fee Motions. This is a new regulation drafted to assist in processing claims for Retraining Incentive Benefits by allowing claimants to obtain appropriate legal assistance from an attorney.

## Summary of FY 02-03 Significant Workers' Compensation Cases

**Affordable Aluminum, Inc. v. Coulter**, Ky., 77 S.W.3d 587 (2002)- In calculating Average Weekly Wage (AWW), the ALJ can consider the availability of work and the prevailing wage in the area.

**Marsh v. Mercer Transportation**, Ky., 77 S.W.3d 592 (2002)-To calculate the AWW of one whose hourly wage was not fixed and could not be ascertained, such as the owner-operator of an over-the-road truck, the ALJ should use the usual wage for similar service, received by paid employees.

**Whittaker v. Brock**, Ky., 80 S.W.3d 428 (2002)- The period of an individual's entitlement to "continuation" benefits under a deceased worker's award is limited by both the duration of the award, itself, and the duration of the individual's status as a qualified beneficiary. After either of those periods expires, the employer is no longer required by KRS 342.730(3) to continue paying benefits to the individual, and the individual no longer has a claim for "continuation" benefits that is subject to resolution by an ALJ. At that point, the appropriate remedy for individuals who did not receive their benefits to which they were entitled is in Circuit Court. The time for bringing such an action is five (5) years under KRS 413.120(2), which applies to "a liability created by statute, when no other time is fixed by the statute creating the liability."

**Ryan's Family Steakhouse v. Thomasson**, Ky., 82 S.W.3d 889 (2002)-In 1996, the Legislature redefined an injury as "any work-related traumatic event ...which is the proximate cause producing a harmful change in the human organism..." The Court determined that this change was an attempt to limit compensation for psychiatric claims more effectively. The Court held that any harmful change that is caused by the physical exertion of work however remains compensable, whether or not it involves an outside physical force. In this case, a worker who was injured from working in awkward position was found to have a compensable injury.

**McDowell v. Jackson Energy RECC**, Ky., 84 S.W.3d 71 (2002)-The termination of benefits when a worker qualifies for old-age social security is not an unconstitutional violation of due process or equal protection.

**Holman v. Holman**, Ky., 84 S.W.3d 903 (2002)-Workers' Compensation benefits are marital property and subject to equitable division at divorce only to the extent that they replace income that would have been earned during the period of the marriage. If the benefits are for a period before or after the marriage, the benefits are not marital property.

**Campbell v. City of Booneville**, Ky., 85 S.W.3d 903 (2002)-If a worker's voluntary intoxication is the primary cause of the injury, the injury is not compensable regardless of whether other factors contribute to causing the injury.



**McCreary County Board of Education v. Begley**, Ky., 89 S.W.3d 417 (2002)-The 20-day period for amending a defective application for adjustment of claim is strictly construed. The amended application must be received by the DWC within the 20-day period.

**Curry v. Toyota Motor Manufacturing**, Ky., 91 S.W.3d 557 (2002)-A claim was filed against the employer and the special fund. The claim against the employer was settled, and the claimant's attorney received a fee of \$15,000 for that settlement. The claim against the special fund was litigated to an award of total disability, and the claimant's attorney sought another maximum fee of \$15,000. The court held that, just as KRS 342.730 limited the claimant's recovery from all defendants to one maximum benefit for permanent, total disability, KRS 342.320 limited the worker's attorney fee in an original claim to a maximum of \$15,000. The court held that where there are multiple defendants, an attorney fee award is premature until after the extent of all defendants' liability has been resolved.

**McCowan v. Matsushita Appliance Co.**, Ky., 95 S.W.3d 30 (2002)-The exclusion for "mental-mental" cases in KRS 342.011(1) does not preclude an award of benefits for a stress-related heart attack.

**Johnson Controls, Inc. v. Russell**, Ky.App., 95 S.W.3d 921 (2002)-The claimant sustained a torn bicep muscle which lead to an infection resulting in septic shock and death. The Court of Appeals affirmed the finding that the employee's death was work related. The Court held that, under the statute, "direct cause" is the equivalent of "proximate cause" and there was sufficient evidence to establish the injury as the proximate cause of the employee's death.

**Travelers Indemnity Co. v. Reker**, Ky., 100 S.W.3d 756 (2003)-Neither KRS 342.267 nor KRS 446.070 authorizes a private cause of action in the circuit court against a workers' compensation carrier for alleged unfair claims settlement practice. Resolution of unfair claims practices remains in the jurisdiction of the DWC.

**Fawbush v. Gwinn**, Ky., 103 S.W.3d 5 (2003)-Where either the 3x multiplier in KRS 342.730(1)(c)1 or the 2x multiplier in KRS 342.730(1)(c)2 would apply, the ALJ can award based on the 3x multiplier only if the evidence indicates that the claimant is unlikely to be able to continue earning a wage that equals or exceeds the wage at the time of injury for the indefinite future.



**House v. BJK Industries**, Ky., 103 S.W.3d 13 (2003)-Where a claimant's job is modified after an award so that the claimant can no longer perform the job and the only job which claimant can perform pays less, the loss of earning capacity was not due to "mere economic factors" and claimant has a right to reopen his claim.

Fluor Construction v. Kirtley, Ky., 103 S.W.3d 88 (2003)-The Court held that it was a proper exercise of the ALJ's discretion to set aside an Order overruling the petition for reconsideration that was not served on the employer's counsel within the time for taking an appeal and to re-issue the Order by enabling the employer to file a timely appeal. The Court held that KRS 342.125 provided for such relief.

Caldwell Tanks v. Roark, Ky., 104 S.W.3d 753 (2003)-Even though part of a hearing loss claim would be barred by statute of limitations for gradual injury, a claimant could recover benefits for the disability which arose within two years of filing the claim.

Woodland Hills Mining, Inc. v. McCoy, Ky., 105 S.W.3d 446 (2003)-The standard for reopening a claim is the law in effect on the date of injury.

Nygaard v. Goodin Brothers, Inc., Ky., 107 S.W. 3d 190 (2003)- Here, the claimant's injury and award both occurred before December 12, 1996. The Court held that the 1996 amendment to KRS 342.125(8) limited the reopening of such an award to within four (4) years of the amendment's effective date.

Kentucky River Enterprises v. Elkins, Ky., 107 S.W.3d 206 (2003)-The Supreme Court reversed the Court of Appeals in part and concluded that an ALJ can only apply the 3X multiplier in KRS 342.730 (1) (c) 1 if there is a determination that the claimant is precluded from earning an average weekly wage that equaled or exceeded the AWW at the time of injury.

## Administrative Law Judges

Honorable Sheila C. Lowther, Chief Administrative Law Judge, is assigned to the Frankfort, Kentucky office. The CALJ presides over a motion docket on Tuesday and Thursday, a settlement docket twice each week, and a CWP docket one day each week. The CALJ prepares a rotation schedule for ALJs, plans two adjudicator training sessions annually, conducts enforcement hearings, takes initial assignment of all CWP claims, covers dockets for other ALJs on an emergency basis, and coordinates ALJ activity.

Each ALJ is appointed by the Governor for a 4 year term from a list of three (3) names submitted by the Workers' Compensation Nominating Commission. Each ALJ is subject to confirmation by the Kentucky State Senate.

In the 2002-2003 fiscal year, 16 Administrative Law Judges oversaw the adjudication of claims filed with the Department of Workers' Claims. The Administrative Law Judges are required to conduct benefit review conferences and formal hearings in these claims. Thereafter, they are required to issue decisions in the claims within 60 days after the date of the hearing. These decisions must contain findings of fact and rulings of law, and are subject to appeal to the Workers' Compensation Board, Court of Appeals, and the Supreme Court.

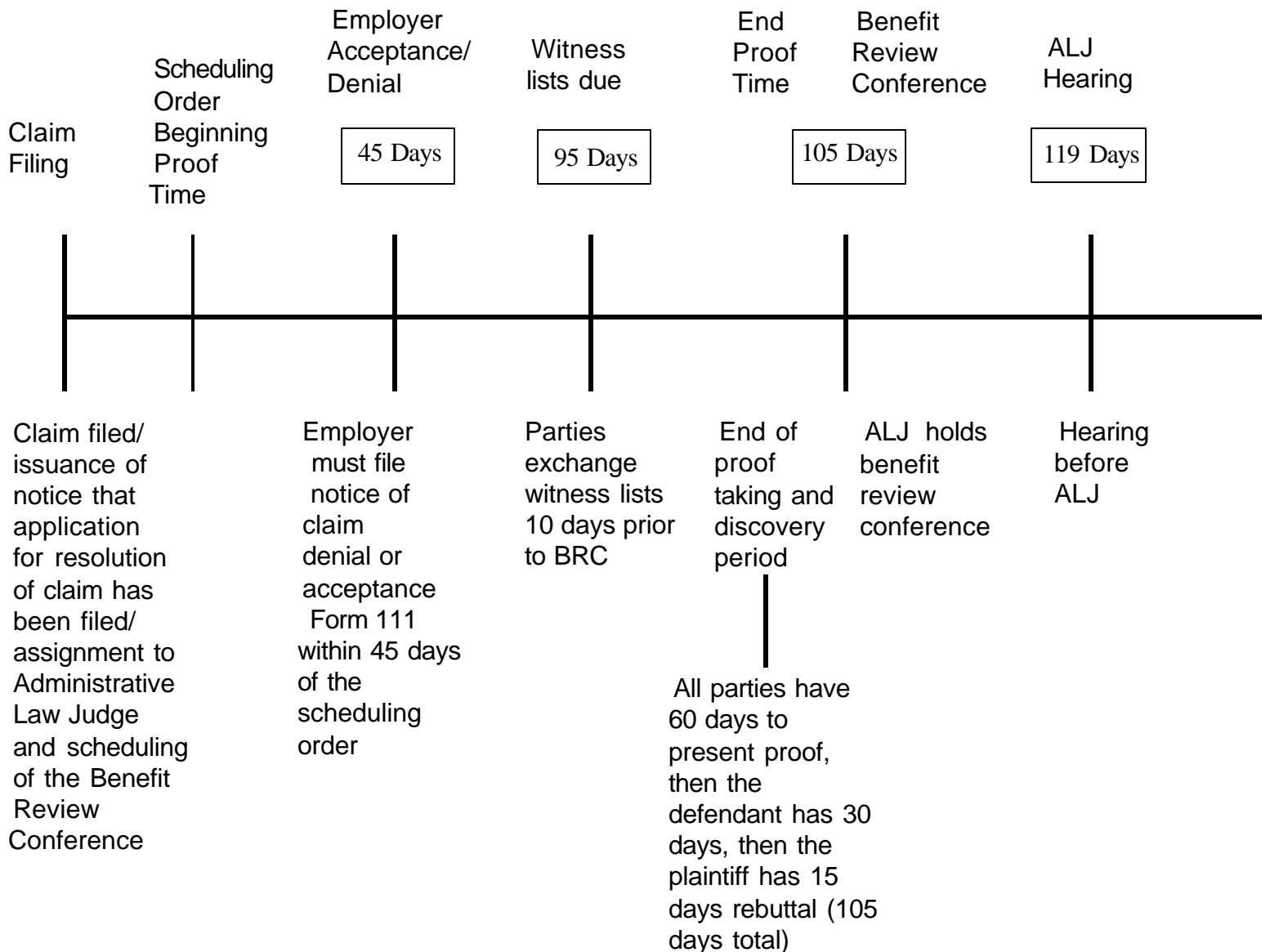
Benefit review conferences and hearings are held at the twelve hearing sites in Kentucky maintained by the Department of Workers' Claims. These hearing sites are located in Ashland, Bowling Green, Florence, Hazard, Lexington, London, Louisville, Madisonville, Owensboro, Paducah, Pikeville and Pineville.

During the past fiscal year, the Administrative Law Judges presided at 5,194 benefit review conferences. A substantial number of those cases were settled. Formal hearings were held in the remainder. The Administrative Law Judges presided at 2,512 formal hearings. They issued 1,846 opinions, and issued an additional 116 opinions on cases which were remanded on appeal.

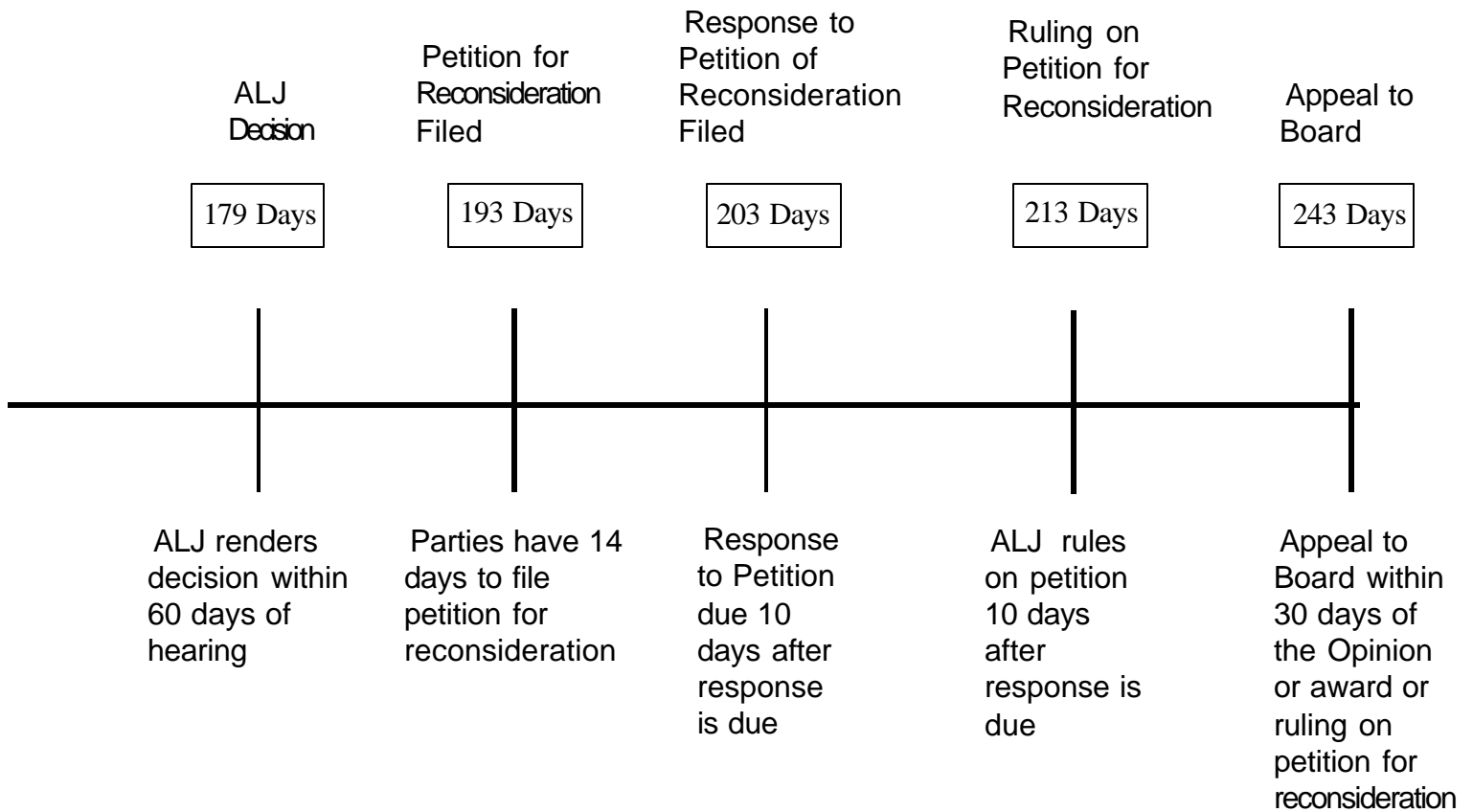
### Attorney Fees Awarded During FY 2002-03

	<b>Number of Fees Approved</b>	<b>Total Fees Awarded</b>	<b>Average Fee</b>
<b>Plaintiff</b>	<b>5,202</b>	<b>\$21,833,569</b>	<b>\$4,197</b>
<b>Defense</b>	<b>4,050</b>	<b>\$13,639,929</b>	<b>\$3,367</b>

# Kentucky Workers' Adjudication

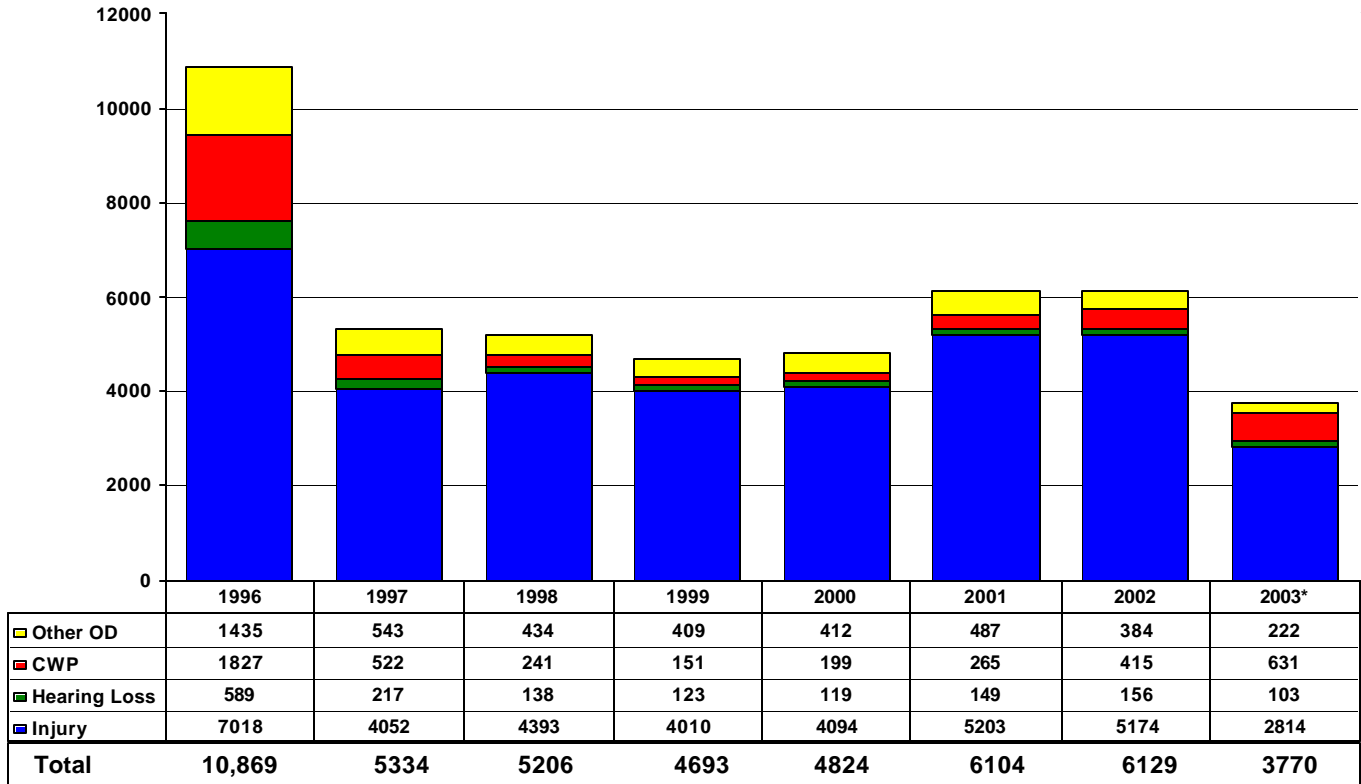


# Compensation Timeline



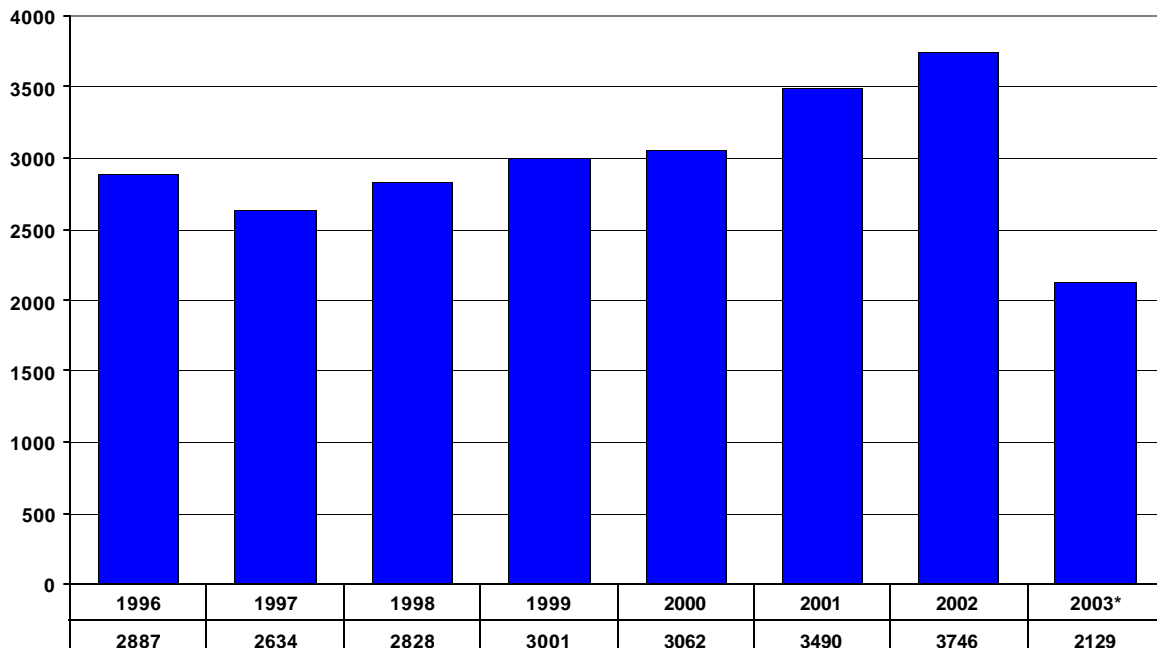
## V. DWC Adjudication Trends 1996 - June 30, 2003

### Claims by Nature Type



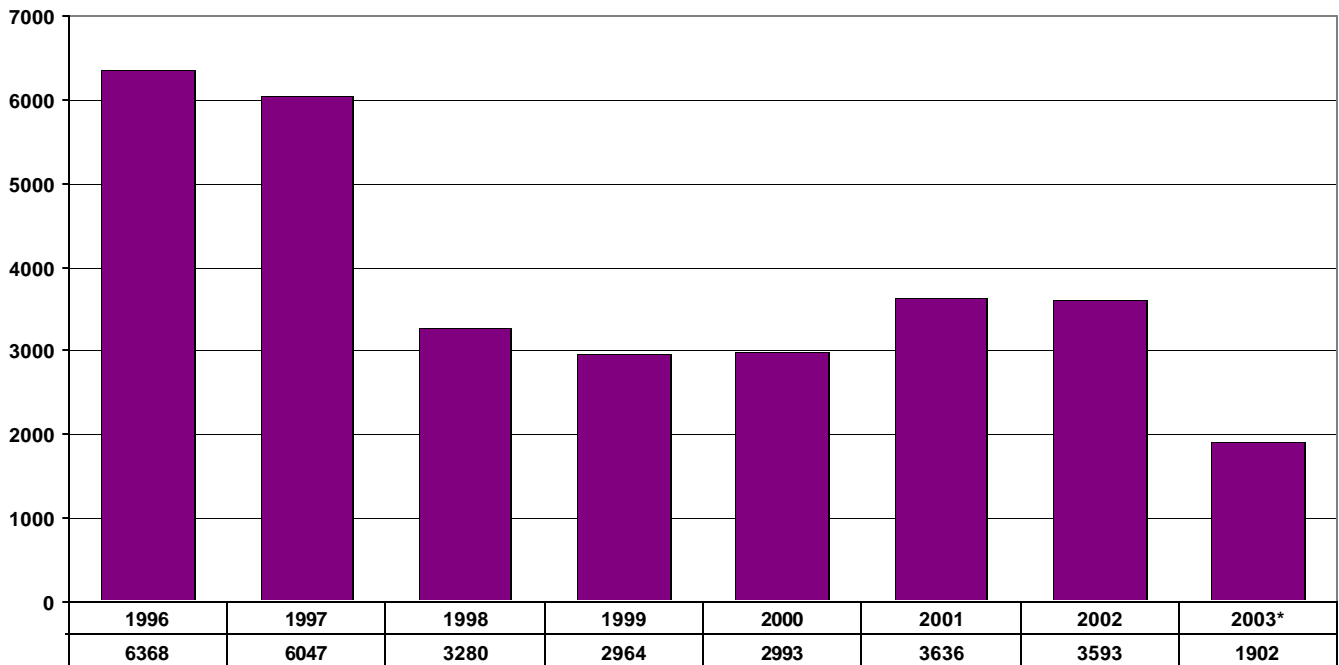
Based on File Date

### Prelitigation Agreements



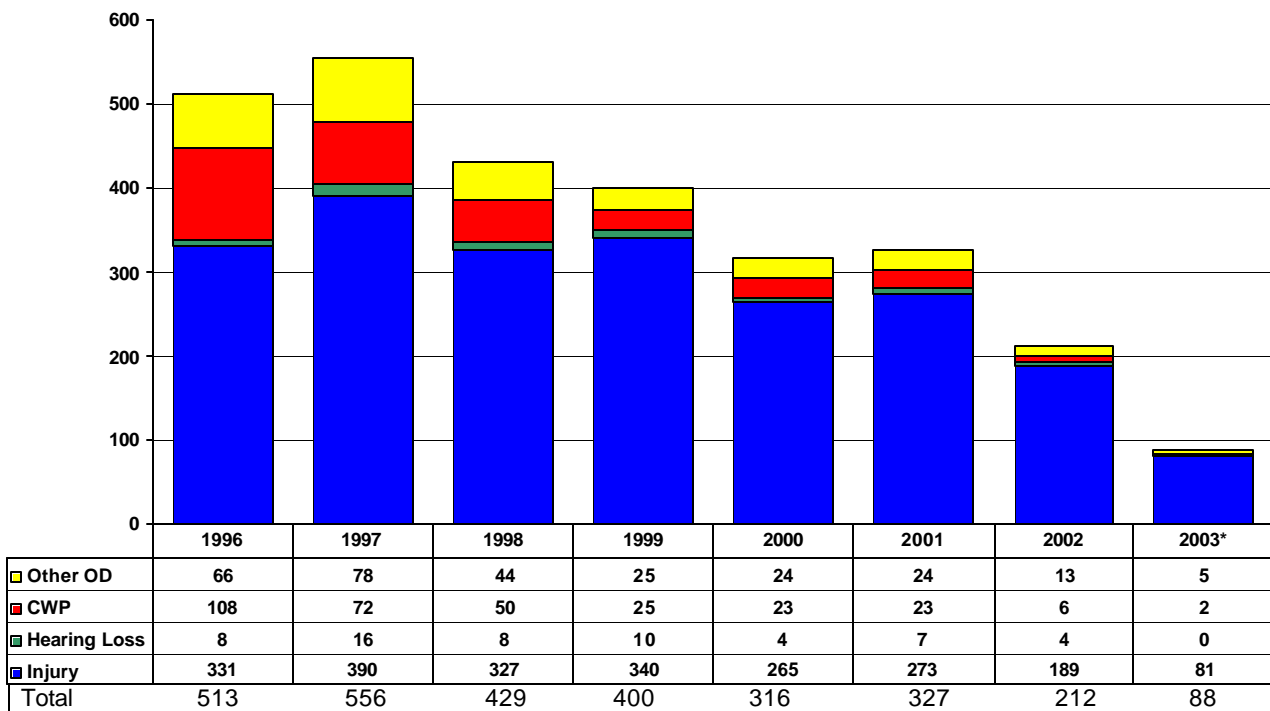
Based on Status Date

## Settlement Agreements by Calendar Year



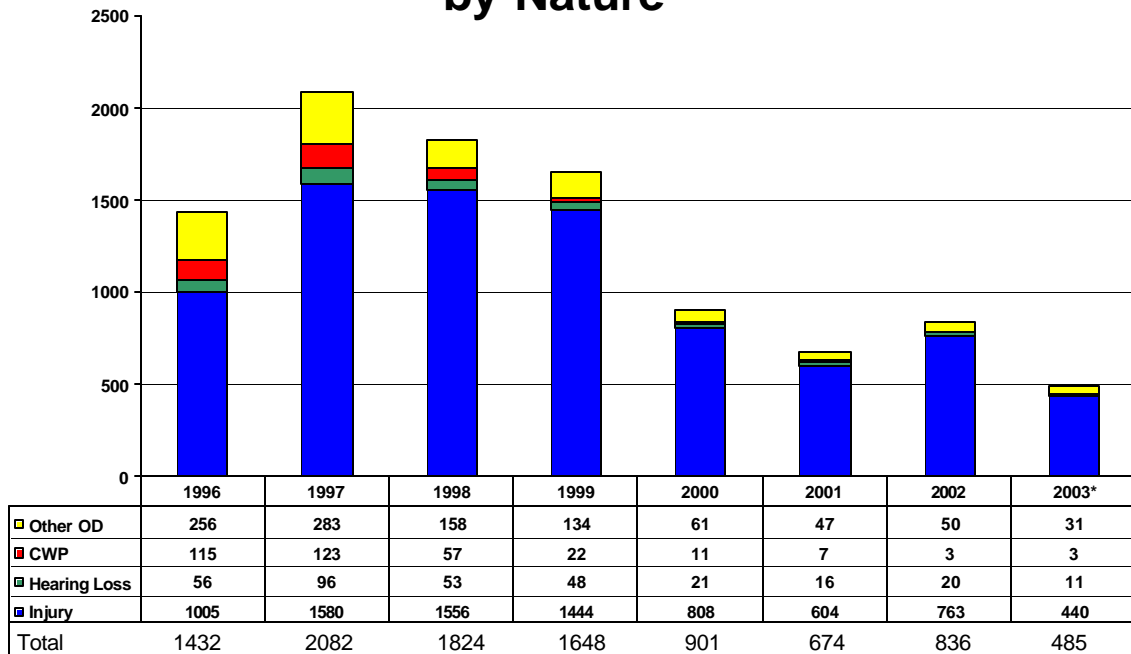
Based on Status Date

## ) Permanent Total Disability Awards by Nature



Benefits governed by date of injury or last exposure  
Data based on most recent date of decision.

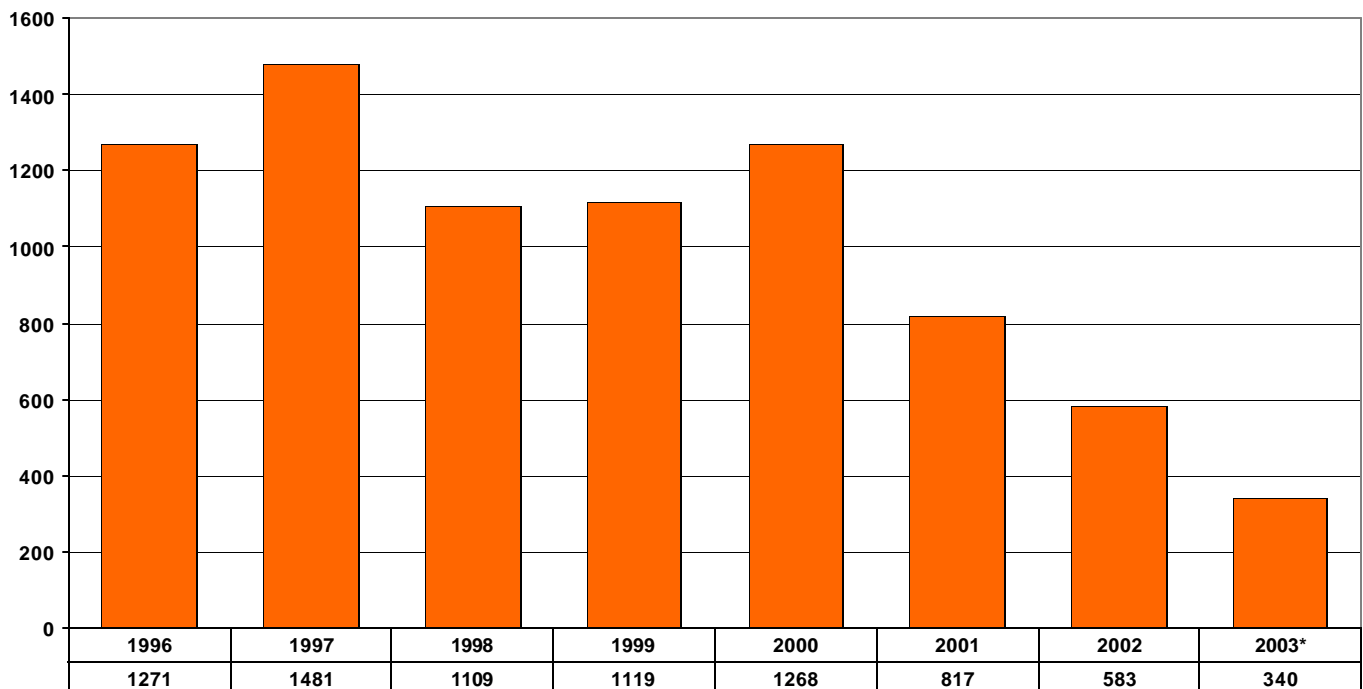
## Permanent Partial Disability Awards by Nature



Benefits governed by date of injury or last exposure.

Data based on most recent date of decision.

## Dismissals by Calendar Year

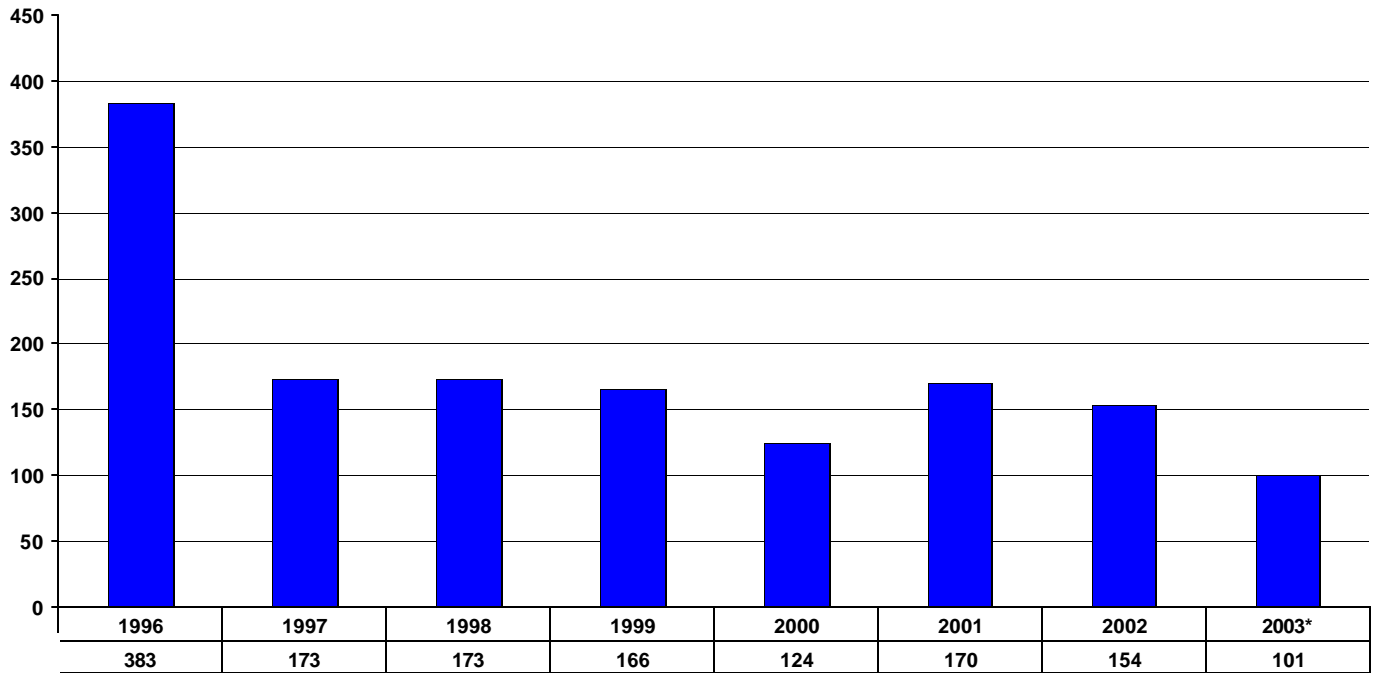


Based on Date of Dismissal

\*Data through June 30, 2003

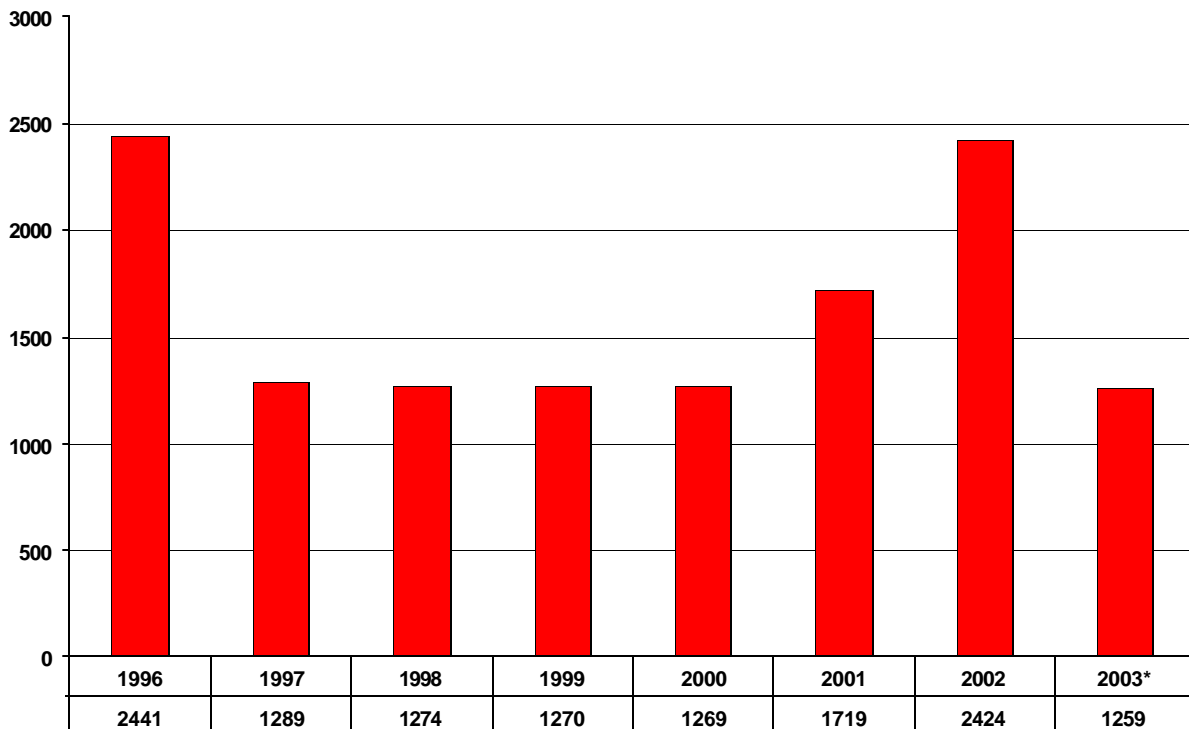


## Carpal Tunnel Claims by Calendar Year



Based on Claim File Date

## Back Claims by Calendar Year



Based on Claim File Date

\*Data through June 30, 2003

## Workers' Compensation Board

The Workers' Compensation Board (WCB) is composed of three (3) members, appointed by the Governor for staggered terms of four (4) years, from a list of three (3) candidates submitted to the Governor by the Workers' Compensation Nominating Commission. Each board member is subject to confirmation by the Kentucky State Senate.

Board member Jonathan Stanley received his Bachelor of Arts degree from Morehead State University in 1978 and a Masters Degree in international economics and political science from the University of Kentucky in 1979. He received his J.D. from the University of Kentucky College of Law in 1982. While in law school, Judge Stanley worked as a law clerk for the Special Fund. From 1983 - 1997, he was a partner in the firm of Wilson and Stanley in Lexington. Judge Stanley was appointed as a member of the Kentucky Workers' Compensation Board in 1999.

Board member John A. Gardner graduated from Western Kentucky University in 1971 and received his J.D. from the University of Kentucky in 1974. Judge Gardner served on the district court bench for the 24<sup>th</sup> Judicial District from 1979-1991 and again from January 2000 to June 2000. He was elected to the Kentucky Court of Appeals in 1991 and served an eight-year term. In July of 2000, Judge Gardner was appointed as a member of the Workers' Compensation Board.

Board chairman Dwight T. Lovan received his Bachelor's degree from Baylor University and J.D. from the University of Kentucky College of Law. Admitted to the Kentucky Bar in 1977, Judge Lovan worked as a staff attorney for the Kentucky Court of Appeals with responsibility for workers' compensation appeals for 15 months. From 1979 to 1990, he practiced law in Owensboro, concentrating in the areas of workers' compensation and civil litigation. Dwight Lovan served as an administrative law judge for four (4) years prior to his appointment as a member of the Workers' Compensation Board in 1994. He was appointed chairman of the WCB in July 2000.

The WCB renders opinions on appeals taken from decisions by ALJs. Opinions are required to be rendered within sixty (60) days from the date the last brief is filed in the appeal. The WCB renders about 600 appellate opinions annually. Any appeal from the WCB is taken by direct appeal to the Kentucky Court of Appeals and thereafter to the Kentucky Supreme Court by virtue of rules adopted by the Kentucky Supreme Court.



# Claims

# Processing



The Division of Claims Processing and Appeals, under the leadership of Division Director, Ora Burge, provides support to the Administrative Law Judges and the Workers' Compensation Board. The two branches within the Division (Claims Branch and Appeals Branch) are charged with the responsibilities of processing all Applications for Resolution of Injury claim (Form 101), Applications for Resolution of Occupational Disease claim (Form 102), Applications for Resolution of Hearing Loss claim (Form 103), and the timely assignment of those claims to the Administrative Law Judges. This division schedules Benefit Review Conferences and court reporter services for the judges. The staff processes motions to reopen, motions for attorney's fee and medical fee disputes (Form 112). They prepare the Frankfort motion docket for the Chief Administrative Law Judge. Appeals from decisions of the Administrative Law Judges to the Workers' Compensation Board, Court of Appeals and Supreme Court are received and processed by the appeals staff. The personnel have the responsibility of updating and maintaining the databases from all filings processed within the division. Statistical and activity reports are prepared on a monthly basis.

The **Claims Branch** is comprised of the Claims Assignment Section, the Case Files Section, the Docket Section and the Open Records Section.

For Fiscal Year 2002-03, the claims assignment section received and processed 5,869 new claims. Of that number, 652 claims were filed for coal workers' pneumoconiosis (CWP). Four thousand eight hundred seventeen (4,817) of these claims were assigned to ALJs for benefit review conferences. In addition, 852 claims originally assigned to the Frankfort Motion Docket involving reopened claims, medical fee disputes, etc., were assigned for benefit review conferences to be heard by ALJs.

The Case Files Section receives and processes motions to reopen, attorney fee motions, requests for widow's benefits, and miscellaneous motions in cases that have not been assigned to the ALJs, and prepares them for assignment to the Docket Section at the appropriate time. During this fiscal year, a combined total of 2,851 motions were received and processed. The section processes all documents and mail in claims that have been assigned to the ALJs and forwards to the appropriate judge. After final decisions have been made by an ALJ and time has expired for an appeal to be filed, this section audits the file for errors and/or corrections as necessary.



The Docket Section specialist prepares motions in cases that have not been assigned to an ALJ and places them on the Frankfort Motion Docket for a ruling by the Chief Administrative Law Judge (CALJ). The specialist attends the docket meetings to record rulings by the CALJ. During this fiscal year, 3,016 motions were assigned to 80 motion dockets.

The **Open Records Section** responds to requests, under the Kentucky Open Records Act, KRS 61.870-884, for information contained in the departmental file system. The requests must be submitted in writing. The requests are received from attorneys, insurance representatives, employers, the Social Security Administration (SSA) and the general public. Documents/materials are certified upon request. The section also verifies

workers' compensation awards for the Kentucky Department of Fish and Wildlife Resources (KDF&WR) for individuals who apply for free Hunting and Fishing Licenses. The section's staff prepares the billing invoices for copy charges and mails to the copy recipients. They verify and process receipt of payments. For the FY 2002-03, the section processed 18,110 written requests, 181 requests from the Social Security Administration, 13,677 pre-employment requests, and 149 requests from the KDF&WR. The section collected \$61,866.92 for copy charges for the fiscal year.

## Appeals Branch

The **Appeals Branch** is responsible for processing appeals from decisions of the Administrative Law Judges to the Workers' Compensation Board (Board), Court of Appeals and Supreme Court. Statutes and regulations require the timely filing of motions, briefs and petitions. The personnel assigned to the Appeals Branch track all such actions to ensure their timely filing. In addition, databases are maintained of all appellate actions. All inquiries regarding the status of active appeals are directed to the Appeals Branch. Personnel work closely with the Board and prepare and present motions to the Board on a weekly basis for



appropriate action. The appeals staff also prepares and transfers claim files to the Board and the Court of Appeals. Additionally, they process all orders and opinions rendered by the appellate courts. During the FY 2002-03, 487 ALJ decisions were appealed to the Board, 154 Board decisions were appealed to the Court of Appeals and 95 to the Supreme Court. A total of 151 files were prepared and transferred to the appellate courts. The staff processed 145 Court of Appeals opinions and 66 Supreme Court opinions.

On a regular basis, the staff of this division responds to information requests from claimants, employees, attorneys, insurance carriers, and the public concerning the procedure for filing claims and the status of claims pending before the DWC.

# Information and Research



Director Deborah S. Wingate leads the Division of Information and Research. This division encompasses the Records Branch and the Technical Services Branch. The key responsibility of this Division includes compilation, storage, and retrieval of data and dissemination of information. The Records Branch assumes the duty of entering and coding data, as well as confirming that the data is valid and accurate. The Technical Services Branch provides hardware and software support, ensuring network connectivity and that GOT standards are being met by the department. Technical Services is also committed to providing analysis, design, and development of agency applications to ensure the department's business needs are being met using the newest technology within GOT guidelines.

## Benchmarking Section

The Division of Information and Research responds to requests for information under Kentucky's Open Records Law. Within this division is the Benchmarking staff, which conducts multifaceted, specialized industry and injury research by collecting, reviewing and comparing data relevant to workers' compensation issues and Kentucky's Department of Workers' Claims.

Data collected from First Reports of Injury, Subsequent Reports of Injury and various other DWC databases provides the statistical reports and analyses compiled by the Benchmarking staff. Quarterly activity reports and DWC's annual report to the Governor are examples of research, analysis and compilation of duties of the Benchmarking staff. Value added research efforts extend to monitoring and evaluating program performance.

Research conducted by Benchmarking staff is also generated by requests from other agencies. Attorneys, government agencies, health care representatives, the media and others submit data requests. Research results are used in a variety of ways: to assist in claim filings, to prepare for safety training programs and to update state and national data banks as well.

## Technical Services Branch

**The Technical Support & Design and Development Section** responds to all technical, networking and programming needs for the Department of Workers' Claims. Technical Support responded to 697 Helpdesk calls for the last 6 months. Technical Support upgraded 245 computers and 39 laptops to Office 2000 and System for Information Management and Business Administration (SIMBA) Application during the month of January. The staff setup the training room with 10 computers and assisted in the installation of Technical Support staff installed contivity boxes in all DWC field office locations, setting up firewall protection for those offices. Two servers were Installed in DWC field office locations. The staff wrote login scripts for installation of SIMBA on all DWC workstations. Virtual Private Network connections were installed for the Division of Fraud and all Administrative Law Judges. Technical Support replaced two UPS systems. The section worked with GOT staff on SIMBA related issues. Staff attended various training sessions throughout the year (MARS, Windows 2000, Office XP, Active Directory). Technical Support moved



computer equipment in conjunction with the reorganization. Staff re-ghosted four laptops in Lexington to allow connection to CompLaw. Design and Development continues with programming and user acceptance testing of EDI and POC applications that interface with SSIMBA. Design and Development staff implemented new Rehabilitation Web Tracking Application. Screen design for POC, FROI & SROI Interface to SSIMBA was completed by the Design and Development staff. Letterhead and envelope template for all sections of DWC was completed. an overhead mounted projector system. All training room computers were installed with the SSIMBA Application and upgraded to Office 2000. The section purchased contivity boxes for firewall protection for DWC Field Offices.

## The Records Branch

The Records Branch is a vital part of the Department of Workers' Claims and is comprised of four Sections: Data Entry, Coding, Imaging, and Agreements. These sections in conjunction ensure the reliability, accuracy, and provide for storage and retrieval of the data received by the Department.

The **Data Entry Section** receives and processes incoming mail, sorting and counting by document type. The information received is entered into the Department's database system. This includes interpretation of orders prepared by the ALJs and pleadings filed by the attorneys.

The **Coding Section** provides oversight of the first report database including data clean-up, error reports, and receiving EDI transactions from trading partners and electronic senders. On average, Coding receives 5,000 first reports monthly.



The **Imaging Section** scans and indexes all documents into the new FileNet Imaging System. In this system, documents can be viewed in a variety of ways, depending upon the users personal preferences. Documents and images may be enhanced, missing pages may be added, and pages may be replaced prior to the scanned page being committed to the optical image file.

The **Agreement Section** processes the First Report of Injury Agreement's, Plaintiff's Motion for Attorney Fees submitted with the Agreement, Plaintiff's Motion for Attorney Fee on closed litigated claims, entry of Agreements from the ALJ litigated claim onto the award database, entry of agreement docket onto the award database, processing of widow's benefits for docket orders, and checking for the correctness of the Statute of Limitations letters generated by EDI.



# Security & Compliance



Director Gary Davis, C.P.A., heads the Division of Security and Compliance. The focus of this Division is to ensure that non-exempt employers maintain workers' compensation coverage for their employees. There are three branches that make up this Division. The Self-Insurance Branch audits the individual and group self-insured employers, monitors the financial strength of individual self-insured employers, and determines the surety requirements necessary to secure benefits for the self-insured employers' workforce. The Coverage Branch maintains records to document proof of coverage for each insured Kentucky employer. The Enforcement Branch investigates the status of Kentucky employer's insurance coverage through on-site visits to encourage compliance with the Workers' Compensation Act in order to ensure that workers within the Commonwealth are protected in the event of a workplace accident.

# Pilot Program For Self-Insured School Systems

Although the privilege to self-insure one's workers' compensation obligations has existed in the Commonwealth for many years, it has historically only been an option for those employers who have proven themselves both financially strong and exhibited the ability to control workplace injuries. Self-insurance for these employers represent both acceptance of the responsibility to continue safe work practices and the recognition of excellent past performance.

Due to the turmoil of the voluntary market in the past two years that has resulted in significant premium increases nationwide, several Kentucky public school systems approached the Department of Workers' Claims during FY 2002-03 exploring alternatives for covering their workers' compensation obligations, including the option of self-insurance. Acknowledging both the premium crisis in the voluntary market and the uniqueness of a public school system that is part of the broader local and state government spectrum, the DWC initiated a pilot program with three school systems in an effort to provide the necessary financial relief and reduce workers' compensation injuries.

This program, was undertaken following communication between DWC Commissioner Greathouse and Commissioner Gene Wilhoit from the Department of Education. It is a joint collaboration which will provide an opportunity for those systems to implement initiatives and develop strategies to improve the work environment and reduce workplace injuries thus allowing the system and its employees to benefit from both a safer workplace and reduced costs. The DWC and the Department of Education have high expectations for the success of this pilot

effort but recognize that the individual school system and its willingness to make the necessary changes will ultimately determine the success or failure of this program.

Careful examination and evaluation of this program will continue during FY 2004 as consideration is given to continuation, expansion, or elimination of this effort. Although the DWC is encouraged by the early reports, we recognize the long-term character of workers' compensation systems and the need to closely monitor the development of these programs for several years before one can determine success.

## Group Self-Insurance

The traditional voluntary insurance market began to harden over the past several years leaving many employers seeking self-insured status to consider membership in one of the Commonwealth's group funds. The increase in membership and the higher premiums have spurred several group funds to new highs in written premium volume. Each of the three largest group funds is writing at or above \$30 Million in annual premium making them some of the largest "carriers" in the Commonwealth.

Pursuant to statutory requirements, the Department of Workers' Claims continues to monitor the financial and business operations of the group self-insurance funds conducting on-site examinations no less than every four years. During fiscal year 2002-03, the examination of KESA, The Kentucky Workers' Compensation Fund, was completed, the report on the examination of the Kentucky League of Cities was issued and the examination of

the Kentucky School Boards Insurance Trust Workers' Compensation Fund (KSBIT) was initiated. In addition, Commissioner Greathouse issued a "Bulletin" on November 8, 2002 to require a peer review of the actuarial examination provided by the group self-insurance fund as part of the exam process. KESA is the first fund to undergo such a peer review as part of its examination.

## Self Insurance Branch

The Self-Insurance Branch periodically reviews the financial strength of individual self-insured employers, audits each self-insured group fund, and determines the surety requirements necessary to secure the benefits of the self-insured employer's workforce. Branch auditors utilize independent resources, including business periodicals, regional and national newspapers, Internet business sites and Dun & Bradstreet services to monitor the financial condition of self-insurers.

Although the majority of Kentucky self-insured employers continue to remain financially sound, self-insured employers experiencing financial stress are placed on the Department's "Watch-List" and monitored on a quarterly basis. "The three

companies on the "Watch-List" at the beginning of this Fiscal period increased to eight by the close of this Fiscal Year, however, Watch-List" membership continues the trend of being relatively low.

During FY 2002-03, the Commissioner, DWC, issued "recertification" to 178 employers to renew their status as a self-insured employer under the department's oversight; and, "certified" 7 new self-insured employers.

During this fiscal year, the Commissioner was obligated to issue 5 certificates of default against self-insured employers who had defaulted in their obligations to pay workers' compensation benefits to injured workers; and made demand on surety in the amount of \$17,462,739, pledged to the DWC for such defaults. Of these surety amounts, the sum of \$11,950,000, including bonds and letters of credit, were transferred to the appropriate self-insured Guaranty Funds for payment of claims. The DWC established third party administrators for payment of claims whose liability arose before the Guaranty Funds were created.

	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
<b>Companies on Watch-list</b>			13	9	5	6	4	8
<b>Individual Self-Insurers</b>	253	249	224	214	201	193	180	175
<b>Self-Insured Groups</b>	17	11	10	10	10	9	9	9

<b>Bankrupt Self-Insured Companies</b>								
	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
Bankrupt	0	0	1	2	4	3	6	8

Each of these bankrupt companies noted above were formerly self-insured employers which had ended their status as a self-insured employer.

## Guaranty Funds

When the General Assembly created the guaranty fund mechanism in 1996 securing the payment of workers' compensation benefits, it recognized that such funds were a necessary component of a complete workers' compensation system. It was essential that provisions existed to continue those benefits that would otherwise be delayed or terminated due to the failure of an individual self-insured employer or a group of self-insured employers to meet obligations because of insolvency. The creation of three distinct self-insured guaranty funds ensured that all employees of self-insured employers, like their counterparts insured under a voluntary insurance market policy,

would be provided a safety net ensuring continuation of benefits. For the first time, every employee in the Commonwealth covered by the Kentucky Workers' Compensation Act, would be guaranteed payment of legally awarded benefits regardless of the character of the insurance coverage obtained by the employer or the employer's financial strength.

Since their inception on March 1, 1997 and for approximately the first three (3) years, none of the guaranty funds were required to administer self-insured defaults. However, beginning with FYE 2000, the guaranty funds have played critical roles in the administration and continuation of

benefits to hundreds of injured workers and their families as a small but growing number of self-insured employers defaulted on their obligations to fund workers' compensation claims.

The Kentucky Individual Self-Insured Guaranty Fund (KISGF) and the Kentucky Coal Employers Self-Insurance Fund (KCESF) have been administering and paying benefits on several insolvent former self-insured employers since FYE 2000. Fortunately none of the group self-insurance funds have become insolvent or defaulted on its obligations requiring the Kentucky Group Self-Insured Guaranty Fund to be activated. There were eight bankrupt self-insured companies this fiscal year.

FYE	KISGF	KCESF
1997	None	None
1998	None	None
1999	None	None
2000	Fruit of the Loom	None
2001	None	Quaker Coal Company
2002	K-Mart	Golden Oak Mining
2003	Corbin LTD, Kentucky Electric Steel	Lodestar Energy Inc.

# Captive Insurance Companies in Workers' Compensation

In an effort to provide fiscally responsible insurance alternatives and to promote economic development within the Commonwealth, the General Assembly passed several new laws during the legislative session in 2000, including SB 245 authorizing the creation of Captive Insurance Companies within the authority of the Kentucky Department of Insurance KRS 304.49-020. Kentucky has a long history of

default, thus ensuring the continuation of benefits to injured workers.

However, while the aim of the legislation is well-meaning and beneficial for many different lines of insurance, an unintended consequence threatens to erode the basic elements of the Kentucky Workers' Compensation system and, if not modified, may lead to severe financial hardships on

both injured workers and the administrative system. KRS Chapter 304.49 permits the creation of captive insurers authorizing them to directly provide various lines of coverage including workers' compensation. Permitting the captive to operate without the benefit of the protection provided by the fronting company, an "admitted carrier" with membership in KIGA, creates a burden on the injured workers of every Kentucky employer who obtains coverage through



foreign captive involvement with the most recent spike in activity occurring shortly during the late 1990s. Many self-insured group funds, recognizing the difficulty of competing with carriers in a soft market and reluctant to participate in the required guaranty fund or be subject to the continued monitoring by the DWC, converted their programs to the voluntary insurance market using a fronting arrangement with an offshore captive. Fronting arrangements, through use of an admitted carrier, continue to be guaranteed by the Kentucky Insurance Guaranty Association (KIGA) in the event of

the captive.

Legislative initiatives relative to the Self-Insured Guaranty Funds, provided a safety net for all Kentuckians subject to the Commonwealth's Workers' Compensation Act. Every injured worker who was awarded benefits resulting from a workplace injury or suffering from an occupational disease was guaranteed the payment of those benefits by the appropriate guaranty fund regardless of the financial strength of the employer. However, with the authorization of captives to provide workers' compensation coverage, this guaranty has been taken away as the captive is specifically prohibited from



contributing to or enjoying the benefits from a guaranty fund. No longer will the employee be covered by KIGA or one of the self-insured guaranty funds. No longer will the payment of benefits be guaranteed when an employer seeks protection under the bankruptcy code and defaults on its obligations.

Furthermore, KRS 304.49-220 specifically restricts the collection of all other “taxes” and, in lieu thereof, imposes a “**tax**” equal to 4 tenths of 1 percent (0.4%) on the first \$20 million in direct premiums collected or contracted for on policies written by the Captive. This “tax” is payable to the Kentucky Revenue Cabinet. For example: \$20 million of direct written premium / simulated premium generates \$80,000 in taxes and avoids \$2.22 million that would otherwise have been paid by the member employers. The Kentucky Workers’ Compensation Act requires that all carriers including self-insurers be subject to the special fund “**assessments**” imposed upon the workers’ compensation premiums. The assessment is imposed upon the employer, based upon the amount of direct written premium or simulated premium (individual self-insured employers), and is currently established at 11.5%. This assessment provides the administrative budget for the entire workers’ compensation program in the Commonwealth and for the retirement of the benefit reserve fund whose liability is required to be pre-funded by the year 2018. An argument can be made that the current captive language, due to its use of “tax” rather than “assessment”, does not negate the requirement by the carrier (captive) to collect the special fund assessment and remit it to the Funding Commission. The assessment may, per statute, be collected from the Kentucky employer and the carrier merely serves as the reporting conduit. However, there remains a necessity for modification of the current language to ensure appropriate collection of both the tax and the assessment. While staff from both

the DWC and the Department of Insurance have undertaken discussion of possible modification to the captive insurance framework, there have been no legislative proposals submitted for consideration by policy makers.

## **South East Coal Restoration Fund (SERF) Update**

The injured employees of formerly self-insured South East Coal continue to receive indemnity benefits as provided by the terms of the South East Coal Restoration (SERF) Plan established in 1996. Although not completely funded, it is the goal of the administrators to fully indemnify claimants until 2028 through prudent investments.

## **Coverage Branch**

The Coverage Branch receives information documenting proof of workers’ compensation coverage for each carrier, self-insured group fund, and employer approved to carry workers’ compensation liability through self-insurance for employees covered by the workers’ compensation act. Carriers and insurers submit the required information using Electronic Data Interchange (EDI) through one of the state approved data collection agents. Data is received into a master database and maintained by the Coverage Branch. An estimated 181 insurance companies, including the competitive state fund Kentucky Employers Mutual Insurance Company (KEMI), insured the Commonwealth’s employers this fiscal year.

The Coverage Branch processed 220,806 transactions received from the three data reporters, WorkComp Link, Claimport (ISO), and KEMI. Certifications of coverage, monitoring of “Wrap-up” construction projects, registration of employee leasing organizations, and other special projects complete the responsibilities that are part of the normal day to day operations.

## Enforcement Branch

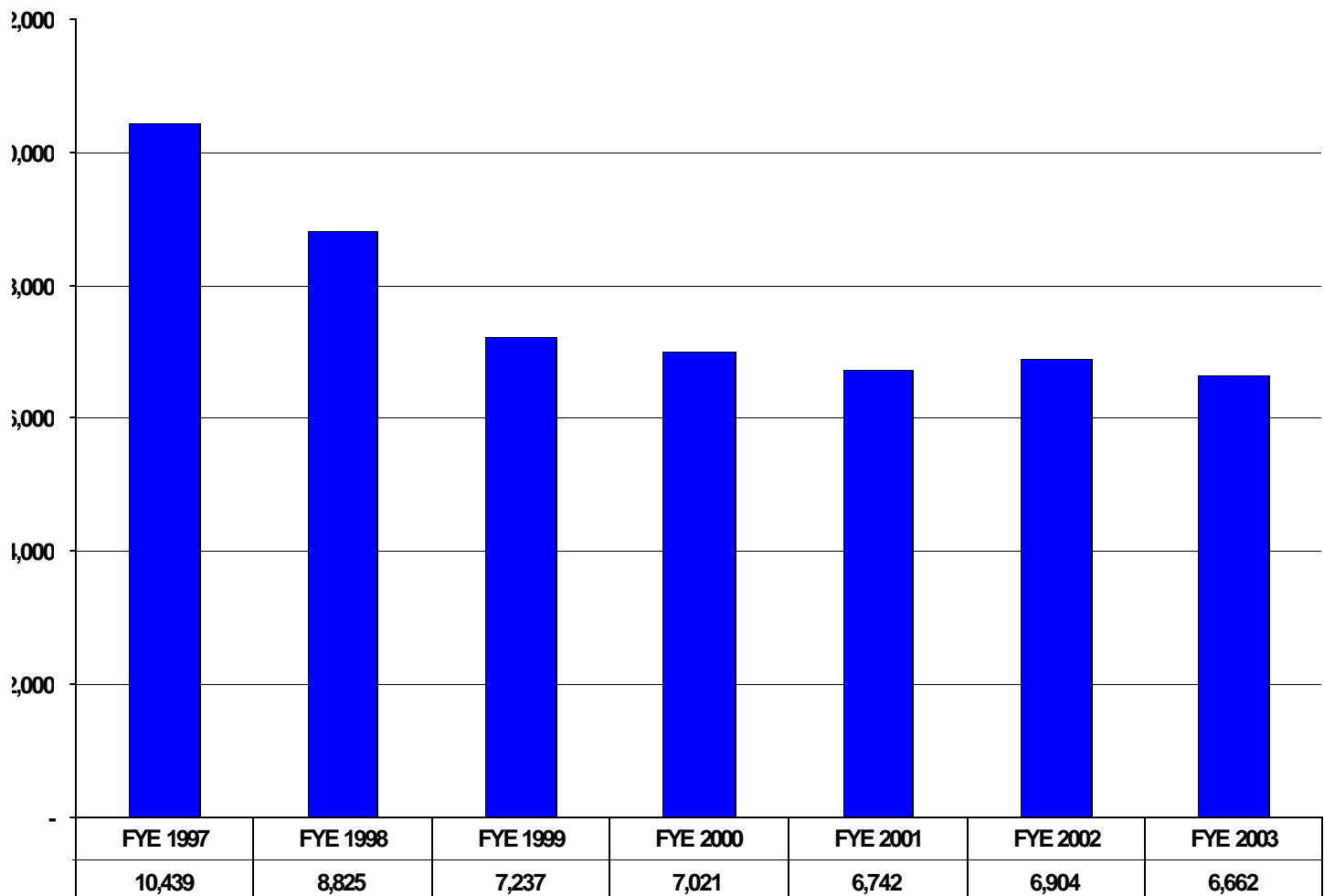
The Enforcement Branch plays a key role in the administration of the workers' compensation laws in the Commonwealth. Compliance officers located throughout the Commonwealth investigate the status of Kentucky employers' insurance coverage to encourage timely voluntary compliance with statutory requirements. During on-site visits, HP Palmtop computers enable compliance officers to enter data elements via touch sensitive screens. Final reports are prepared and transmitted electronically where they are received into the database at the Frankfort office. This fiscal year, compliance officers conducted 10,095 investigations, which resulted in 447 civil penalties being issued for noncompliance of the Workers' Compensation Act. As a result of the penalties assessed, an amount of \$296,609 was collected.

While the Department is cognizant of the propensity for a small segment of employers to operate without the required workers compensation coverage, we are encouraged that the direction of the statistics in the investigation analysis chart below suggest continued improvement in the enforcement education effort over past years.

<b>Investigation Analysis 1999-2003</b>					
	<b>FY 1999</b>	<b>FY 2000</b>	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>
<b>Investigations</b>	9,990	10,208	10,248	11,173	10,095
<b>Citations</b>	571	560	768	461	447
<b>Collections</b>	\$490,597	\$308,418	\$249,297	\$252,564	\$296,609

The Enforcement Branch assumes the responsibility to monitor and maintain a database on the filing of the Form – 4, Employees Notice of Rejection of the Workers' Compensation Act. The number of employees waiving their rights to protection under the Act has continued to decrease steadily as the number of filings reached a new low of 6,662 at the close of this Fiscal Year.

### Employee's Written Notice of Rejection Filed with the Department of Workers' Claims

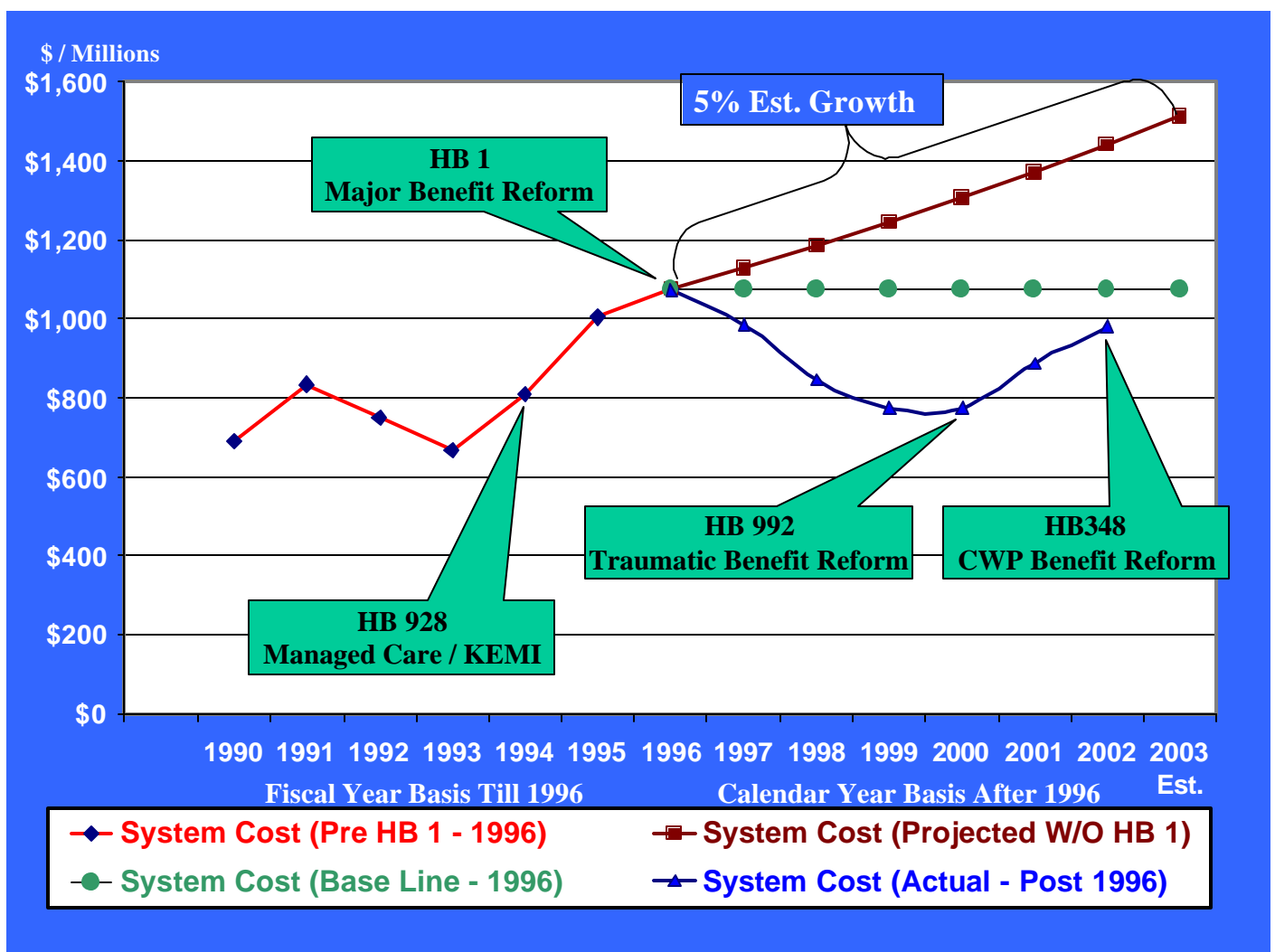




# Workers' Compensation System Costs

The graph below provides a visual representation of the system's actual cost from 1990 until passage of HB 1 during the special session in December 1996.

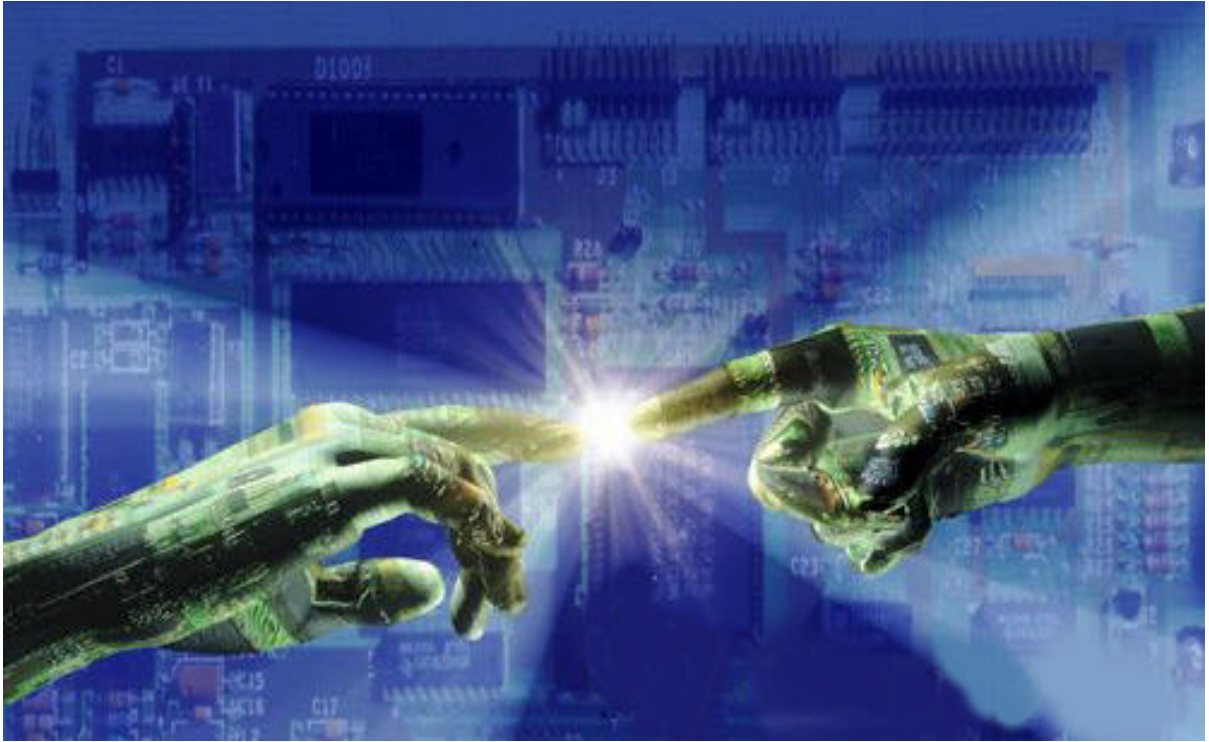
Thereafter, the graph, it divides into three lines. A base line is created that uses the 1996 cost of \$1.1 billion for each succeeding year. An estimated growth line is provided beginning with 1996 and increasing at a rate of 5% per year. The 5% rate was an estimate provided in 1996 by the actuaries who were providing cost estimates and projections for the General Assembly. A third line shows the actual system costs for each year from 1997 through 2003 (estimated). Beginning with 2001, though system costs have increased yet, six (6) years after the reform, the cost of the workers' compensation system remains less than the cost in 1996 even without adjusting for the increase in payroll or medical inflation.



Quantifying the cost increase or savings is a major challenge of any workers' compensation reform package. Since 1996 the DWC has measured the cost of the system by creating a single generic workers' compensation cost per hundred dollars of payroll and adjusting it for the increases in total Kentucky payroll from year to year. Fiscal year 1996 was by far the highest year of system cost since we began monitoring. Thereafter, the approximate cost per hundred dollars of payroll enjoyed a steady decline over the next few years until it settled around the \$1.50 level for approximately 3 years from 1999-2001 when it began a slow but steady climb growing at a rate of 6% in 2002 and 8% in 2003. Most of the escalation in cost to employers over the past two years is attributable to increasing medical expenditures.

# Constituent

# Services



The Division of Ombudsmen and Workers' Compensation Specialists provides a centralized source of information and assistance. Established in 1994, this Division directly services the needs of workers, employers and members of the insurance and medical professions.

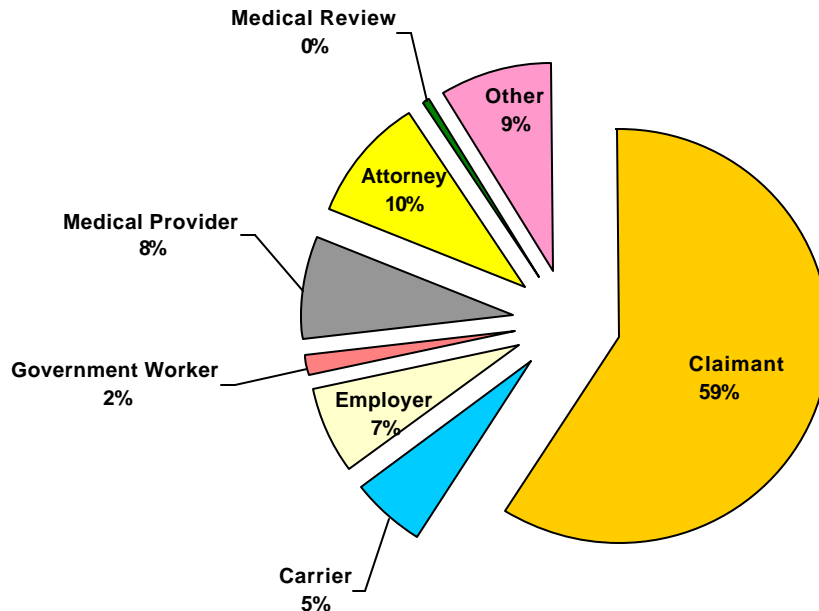
Toll-free telephone assistance is available on topics such as filing a claim, assistance in resolving disputes, rights and various procedures as well as a wide range of medical related issues. Through the Department's web site, this Division also receives and answers or directs inquiries.

In addition to the Ombudsmen and the Workers' Compensation Specialists Services sections, the Medical Services section is included in this Division. The primary focus is on medical cost containment and facilitating the vocational rehabilitation and independent medical evaluation services.

Cathy Costelle, Division Director and John Mann, Chief Specialist direct the Division of Ombudsmen and Workers' Compensation Specialists. Both are attorneys who have delivered more than three decades of service to the workers' compensation program. Cathy Costelle retired from state government at the end of July 2003.

During FY 2002-2003, the Division of Ombudsmen and Workers' Compensation Specialist Services continued its proactive efforts to provide assistance and information, responding to 15,070 requests. Most were completed within one week of the initial contact.

### **Division of Ombudsmen and Workers' Compensation Specialists Distribution of Requests for Assistance by Source**



The chart above represents the breakdown on the sources of requests. The listing below outlines the subject matter. The category 'Other' includes inquiries such as the attorney of record, the carrier/insurance agent, current mileage rate and miscellaneous questions of a general nature.

<b>T O P I C S</b>	<b>N U M B E R   O F C A L L S</b>
<b>R i g h t s   a n d   P r o c e d u r e s</b>	<b>9 , 1 2 4</b>
<b>C l a i m s   S t a t u s   R e q u e s t</b>	<b>1 , 9 4 1</b>
<b>F o r m   R e q u e s t</b>	<b>1 , 5 4 9</b>
<b>O t h e r</b>	<b>1 , 2 9 3</b>
<b>C o v e r a g e</b>	<b>1 , 1 8 1</b>
<b>F i r s t   R e p o r t   o f   I n j u r y</b>	<b>7 8 4</b>
<b>M e d i c a l   F e e   S c h e d u l e</b>	<b>3 3 8</b>
<b>C l a i m   F i l i n g   A s s i s t a n c e</b>	<b>2 5 2</b>
<b>R e f e r r a l s   t o   O u t s i d e   A g e n c i e s</b>	<b>2 4 3</b>
<b>U t i l i z a t i o n   R e v i e w</b>	<b>1 3 3</b>
<b>M e d i c a l   F e e   D i s p u t e</b>	<b>1 3 1</b>
<b>F r a u d</b>	<b>7 8</b>
<b>M a n a g e d   C a r e</b>	<b>4 9</b>
<b>U n f a i r   C l a i m s   S e t t l e m e n t   P r a c t i c e   I n v e s t i g a t i</b>	<b>3 9</b>
<b>V o c a t i o n a l   R e h a b i l i t a t i o n</b>	<b>2 0</b>

## Constituent Services

While specialists cannot represent claimants or appear with them at hearings, specialists assist injured workers who are not represented by an attorney in filing claim applications, and completing other forms with oversight from staff attorneys.

In addition to providing information, ombudsmen and specialists intervened in various disputes between two or more parties within the workers' compensation system. In these interventions, DWC staff members assist the parties in reaching a resolution to the dispute by facilitating communications between the parties. Ombudsmen and specialists intervened in 2,161 disputes this fiscal year, successfully resolving a majority of them.

### Updated Fee Schedules

Mandated by statutory requirements, and implemented as a cost containment measure, the reimbursement fee schedules are routinely updated and distributed by the Department of Workers' Claims. These fee schedules set the limits to amounts that physicians and hospitals can charge for treatment or services related to workers' compensation injuries.

The schedule of fees for reimbursement to 106 hospitals located within the state and calculated annually was restructured by the Commissioner, with an effective date of April 1, 2003. The Hospital fee schedule is posted to the Department's website <http://labor.ky.gov/dwc>.

The Medical Fee Schedule for Physicians that took effect in October 15, 2001, remained applicable during FY 2002-03. As required by KRS 342.035, revised Medical Fee Schedule for Physicians will be developed in FY 2003-04.

### Health Information Portability and Accountability Act (HIPAA)

On April 14, 2003, the Federal Health Insurance Portability and Accountability Act privacy regulation became effective. This regulation limits the situations in which medical providers may release patient information, unless the information is necessary for the treatment, payment or



health care operations. Workers' Compensation, in most instances, is exempt from HIPPA privacy requirements.

An employee who reports a work injury or who files for workers' compensation benefits must "execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation." The form 106 is the waiver and consent that each employee must sign. In compliance with the HIPPA regulations, the Department of Workers' Claims, working in conjunction with the Kentucky Medical association, amended the form 106. On April 14, 2003, the Department of Workers' Claims filed an emergency regulation amending the form 106. Links to this form can be found on the website for the Department of Workers Claims, the Kentucky Medical Association, and the Louisville Bar Association.



The function of a managed care plan is to assure that quality medical care will be delivered to an injured employee in a prompt manner and at a reasonable cost to the employer so as to expedite the injured employee's recovery and facilitate a return to work. Reporting by the certified plans is required and submitted in the form of annual reports.

Managed care in workers' compensation is not mandatory, but since 1998, employers and/or their insurance carriers have utilized this concept to cover a significant percentage of Kentucky's workforce. It has been as high as 41% of the workforce.

## Managed Care

By legislative enactment in 1994, employers have had the ability to utilize 'managed healthcare systems' for their employees who sustain work-related injuries. Pursuant to KRS 342.020, KRS 342.035, and KRS 342.735, the Commissioner of DWC promulgates administrative regulations establishing standards and procedures for certification of workers' compensation managed healthcare system plans.

In FY 2002-03, 36 workers' compensation managed healthcare plans, as certified by the Commissioner, DWC, were operational with participation of some 12,191 employers, and covering approximately 31% of the workforce, excluding those employees engaged solely in agriculture.

Each plan is reviewed by the staff of the Medical Services Branch, on a quarterly basis, to ensure that all categories of licensed medical professionals are accessible in local

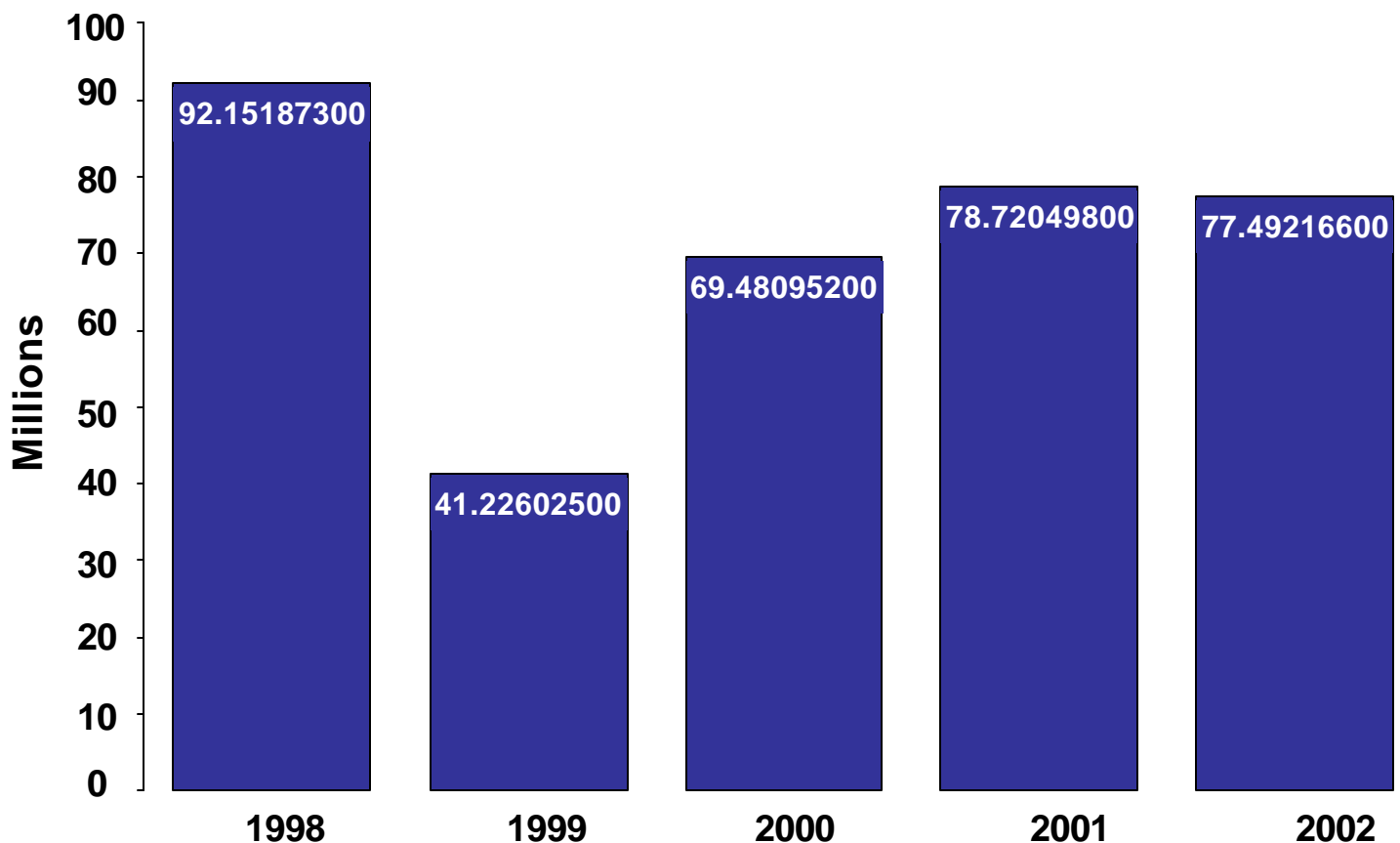
areas where employers and employees reside and work. During FY 2002-03, this staff undertook a 'customer satisfaction' random survey of employees who had sustained work-related injuries and whose medical treatment was carried out by virtue of a managed healthcare plan. While not science-based, the survey, accomplished through several hundred telephone conversations, provided feedback as to employee perceptions, generally relevant in 'customer satisfaction' type samples.

Of those responding, 9 out of 10, were generally unaware that their employer had, in place, a managed care health system to serve them if they sustained injury at their work site. At time of injury, 87% of those responding did not recall receiving information or material about the managed care plan. Ninety-three percent (93%) could not recall if a list of approved physicians was provided to them at time of injury.

On the other hand, 60% of those responding stated they experienced no problems obtaining information on physicians under the plan which could be utilized. Almost 70% responded that approval of recommended treatment by the physician was accomplished without delay. And, 53% of those responding, indicated the medical treatment they received was satisfactory. Only 12% rated their medical treatment in the category of extremely unsatisfactory.

Given that much of the response reflects a need for better upfront communication between the employer, managed healthcare plan, and employees, the staff of this division will undertake efforts with the certified plans to use 'best practices' in the area of communication and providing information of services.

### **Trends In Managed Care Medical Costs**



## Provider Relations and Medical Cost Containment

The Provider Relations and Medical Cost Containment section implemented processes for the new CWP program in FY 2002-03. Staff of this section worked daily on cost containment health care issues. Utilization review, hospital fee schedule, medical fee schedule, and managed care are included in this section as well. The total number of requests for assistance in this section during FY 2002-03 was 1,942. The table below delineates the topics requiring staff responses.

<b>Topics</b>	<b>Number of Requests</b>
Utilization Review & Medical Bill Audit	97
Managed Care	348
Medical Scheduling and B-reader Program	1,322
Hospital Fee Schedule	40
Medical Fee Schedule	31
Physician Provider Organization	55
Health Insurance Portability and Accountability Act	4
Other	45



## Vocational Rehabilitation

Retraining benefits are available for those workers that can no longer perform their pre-injury duties due to the lingering effects of a work-related injury. Evaluations of the worker's aptitudes and academic levels are performed at various assessment centers across the state and guidance is provided in the pursuit of retraining options. Payment of tuition, books, equipment and supplies may be provided by the employer or insurance carrier for up to 52 weeks. If disputes arise concerning Vocational Rehabilitation benefits, an ALJ will resolve the dispute.

The following statistics are for casework activities during FY 2002-2003. The numbers in the first column refer to cases referred by ALJ's. Referrals for Vocational Rehabilitation at "other" times, come from attorneys for the injured employee, the insurance adjuster, or, in some cases from the employee as a self-referral.

	<u>ALJ</u>	<u>OTHER</u>	<u>TOTAL</u>
<b>Referred during 2002-2003:</b>	<b>130</b>	<b>51</b>	<b>181</b>
<b>Referred for vocational evaluations:</b>	<b>81</b>	<b>27</b>	<b>108</b>
<b>Started training during 2002-2003</b>	<b>7</b>	<b>4</b>	<b>11</b>
<b>Completed training during 2002-2003</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Employed after retraining:</b>	<b>7</b>	<b>3</b>	<b>10</b>

A new database has been developed for the purpose of monitoring the progress of injured workers referred for vocational rehabilitation. Established within the IKYLABOR site, this allows multiple users to have easy access and the ability to review cases and provide assistance to the claimant. In addition to providing the regularly requested facts and figures, this new system will allow for querying on a variety of data fields, enabling the staff to more easily capture, analyze and measure the performance of the vocational rehabilitation program of the Department.

## Utilization Review

Utilization Review is governed by 803 KAR 25:190 and is a review of the medical necessity and appropriateness of medical treatment and services. It was implemented as a cost-containment measure and for managing quality assurances in the delivery of medical services to injured workers.

Workers' Compensation claims are automatically selected for utilization review when they meet the following criteria:

- Upon a medical provider's request for pre-authorization;
- Upon notification of a surgical procedure;
- When total medical costs exceed \$3000;
- or when total lost work days exceed 30.

## Participation & Leadership Positions in IAIABC & SAWCA

The Department of Workers' Claims continues to maintain a high profile within the national and international workers' compensation community holding significant leadership positions.

**IAIABC** - The International Association of Industrial Accident Boards and Commissions, founded in 1914 just six years after enactment of the nation's first workers' compensation act, is an organization where Workers' Compensation professionals from a number of disciplines interact. Government officials and regulators, business and labor leaders, medical providers, law firms, insurance carriers, rehabilitation and safety experts all make up the IAIABC. It is a worldwide association made up of thousands of individuals from over 70 jurisdictions and hundreds of organizations. Early identification of issues representing regional, national, and international concerns enable the membership to collectively develop innovative solutions and thereby benefit the individual jurisdiction.

Gary Davis, Division Director of Security and Compliance represents the DWC serving as Chair of the IAIABC Audit Committee and as a member of the Nominating Committee for Executive Committee positions.

**SAWCA** - The Southern Association of Workers' Compensation Administrators was organized in Jackson, Mississippi in 1949 and was the first regional association of the International Association of Industrial Accident Boards and Commissions. SAWCA has been a leader in the field of workers' compensation for over 40 years, providing an opportunity for member states that share distinct regional commonalities, commitments and concerns to explore issues and identify solutions in an educational atmosphere that encourages professional development and cooperation. Consisting of 17 states and the Virgin Islands, SAWCA's 18 active jurisdictions work diligently to provide innovative and relevant educational opportunities that include an annual conference with six standing committees, an all-committee conference, and a regularly published newsletter. The committees are continually examining the current issues in workers' compensation in an effort to keep the membership on the cutting-edge of the profession.

The Kentucky Department of Workers' Claims has a long history of filling leadership positions with SAWCA and this tradition continued during FYE 2003. Dwight T. Lovan, Chairman of the Kentucky Workers' Compensation Board served as Chair of the Adjudication Committee. Deborah Wingate, Division Director of Information and Research served as Chair of the Management & Information Services Committee. Gary Davis, who served as Chair of the Self-Insurance Committee and as Vice-President of SAWCA, is scheduled to assume the duties of the President of SAWCA in two years. Coupled with the Commonwealth's selection as the site for the 2004 All Committee Conference, Kentucky's DWC continues to provide significant resources and to derive considerable benefits from its association with SAWCA.

## **Key Personnel\***

\* at time of publication

Larry Greathouse, Commissioner	(502) 564-5550, Ext. 4421
Thomas Lewis, Deputy Commissioner	(502) 564-5550, Ext. 4412
 Donna G. Dixon, Executive Director Office of Administrative Services	 (502) 564-5550, Ext. 4470
Dwight Lovan, Chairman, Workers' Compensation Board	(270) 687-7339
Sheila Lowther, Chief Administrative Law Judge	(502) 564-5550, Ext. 4422
 Rex Hunt, General Counsel	 (502) 564-5550, Ext. 4498
 Gary Davis, Director Division of Security & Compliance	 (502) 564-5550, Ext. 4526
Beverly Armstrong, Coverage Branch Manager	(502) 564-5550, Ext. 4448
Steve Taluskie, Self-Insurance Branch Manager	(502) 564-5550, Ext. 4452
Tom Powell, Enforcement Branch Manager	(502) 564-5550, Ext. 4450
  Deborah Wingate, Director Division of Information & Research	  (502) 564-5550, Ext. 4423
 Research Specialists:	
Scarlett Consalvi	(502) 564-5550, Ext. 4489
Fran Davis	(502) 564-5550, Ext. 4578
Kim Olds	(502) 564-5550, Ext. 4484
 EDI Administrator & Webmaster Stephen Mason	 (502) 564-5550, Ext. 4540
 John Mann- Chief Specialist	 (502) 564-5550, Ext. 4532
Ingrid Bowling - Managed Care	(502) 564-5550, Ext. 4449
 Ora Burge, Director Division of Claims Processing	 (502) 564-5550, Ext. 4534
Dianna Rose, Appeals Branch Manager	(502) 564-5550, Ext. 4467
Libby Sea, Claims Branch Manager	(502) 564-5550, Ext. 4507

## **DWC Fax Numbers:**

Commissioner's Office (502) 564-5934	Claims (502) 564-3792
Administrative Services (502) 564-8250	EDI/Research (502) 564-5741
Ombuds & WC Specialist (502) 564-9533	Security & Compliance (502) 564-0916
Open Records (502) 564-5732	WC Board Offices (859) 246-2779
Medical Schedulers (502) 564-5741	Vocational Rehabilitation (502) 564-9533